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H. H. Castle

THE AMERICAN
MUSEUM OF NATURAL HISTORY
NEW YORK

PRACTICAL REMARKS

ON THE PRINCIPLES OF

RATING,

AS APPLIED TO THE PROPER AND UNIFORM ASSESSMENT OF RAILWAYS,
GASWORKS, WATERWORKS, MINES, CEMETERIES, ETC., ETC.



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PREFACE TO THE SECOND EDITION.

I do not know that I can say much more than I have already said in the Preface to the first edition. I can but add, that the ignorance on the subject still, to a great extent, continues, and that though many parishes have profited by the publication of the first edition, there remain many more, who might materially profit by the publication of a second. The principle of assessing Railways and other Public Companies may be better understood now than they were, yet they are not understood so well as in the interests of other ratepayers, they ought to be. It is to my interest and theirs, that the subject should be thoroughly understood everywhere. In 1863, the date of the first edition, there were many points left undecided, which have been cleared up since. These points I have in this edition fully gone into, and have quoted and given extracts from the cases determining them. I have endeavoured to bring the whole subject up to this time, and I have in most cases given the words of the judgment—in all cases the words of the head notes;

but whenever these head notes did not in my opinion correctly epitomize the case and judgment, I have not scrupled to give my own individual construction of the judgment. Law and fact are so mixed up together in matters of scientific values, that it requires the mind of a valuer as much as that of a lawyer, thoroughly to understand the points at issue, and to comprehend and correctly apply the principle laid down by the court for the guidance of the surveyor in reference thereto.

As some uncertainty seems to prevail as to the correct principle upon which Coal Mines should be assessed, I have given a Chapter upon Mines, Brick Fields, Cemeteries, and that class of property generally, where the corpus or subject matter of the rate is in time exhausted, and have perhaps, in consequence, gone more fully into that one subject than I should otherwise have done.

H. J. C.

P.S. In making extracts from the various cases referred to in this work, I have to thank my son, of the Inner Temple, for the able assistance he has rendered me.

PREFACE TO THE FIRST EDITION.

THE only apology I can make for bringing this little Work before the public is, to plead that it is required. The ignorance that prevails in most parts of the country districts of England and Wales is really lamentable. "The Railway is
" merely, it is frequently said, the abstraction of
" a certain number of acres from the Parish, which
" ought certainly to be rated to an equal amount
" with the land adjoining; and the station and
" buildings are merely so many cube feet of brick
" work, which ought to be cubed up and priced,
" but all the appurtenances and conveniences
" attached thereto have no rateable value at all." These and similar mistaken ideas upon the subject are still, I am sorry to say, to be found everywhere.

In giving this Pamphlet therefore to the Public, and furnishing them with some idea of the principle on which the rateable value of Public Companies ought to be ascertained, I feel that I shall be doing the Public a service, and shall be assisting the Legislature in the object they had

in view in passing the Union Assessment Committee Act—that of obtaining a fair and uniform assessment of all properties that are rateable.

Such an anomaly as the same railway—which passes through several parishes of the same union, without a station among them to vary the traffic—being rated in one parish at £200 per mile, in another at £600, and in a third, perhaps, at £50, can no longer exist, as the practice which engendered it, of employing a local farm valuer to value the Railway and other public works,—*one who, in many cases*, arranged with the Company, so as not to expose his own ignorance, what the valuation should be, before he sent it in,—will, of course, be no longer necessary. The larger funds of the Union being available for that purpose will command, and the larger interests at stake of many parishes—instead of one, as it used to be, which had to fight its battles all alone—will justify, the employment of competent persons for the future, of men who have devoted their time and talents specially to the assessment of Public Companies. I am glad to see that the propriety of dividing the work, and engaging persons specially to value the Public Companies, has occurred already to several unions, as in this way only can they secure the services of parties

who are fully competent for the work they undertake.

These men, when called in, will take care to secure a fair and uniform rating of all the Public Companies throughout the Union. This uniform rating throughout the Union, when once secured, will be followed eventually by an uniform rating throughout the county; for this reason, that as Union boundaries furnish no element of difference in Railway receipts, if part of the same Railway is in one Union and the adjoining part in another, having no stations upon one or the other to disturb the traffic, the rateable value of the Railway will be of necessity the same per mile in each; for, should this not be so, and should there be any considerable difference between them, the discrepancy would at once present itself to the County Rate Committee, who would have all the Unions before them. In this way, by degrees, the assessment of the Public Companies will become uniform throughout the County, and by means of the Railways, eventually throughout England; county boundaries no more furnishing any element of difference in traffic receipts than Union boundaries. One or two cases of the anomaly of Quarter Sessions of adjacent Counties deciding in one county that the same Railway

is assessable per mile at, say, £600, and in the adjoining County assessable at £200 per mile, when they should, of necessity, be the same, would be sufficient to arouse the attention of all parties to the subject, and to lead to the adoption gradually of an uniform County Valuation.

H. J. C.

June, 1863.

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EXTRACTS.

UNION ASSESSMENT COMMITTEE ACT, 1862.

CLAUSES—15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,
32, 33, 34, and 39.

15. The gross estimated rental for the purpose of the schedule to this Act shall be the rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rentcharge, if any :

Definition
of gross
estimated
rental.

Provided that nothing herein contained shall repeal or interfere with the provisions contained in the 1st section of the said Act (6 & 7 *William* the Fourth, chapter 96), defining the *net annual value* of the hereditaments to be rated.

16. The committee by their order may from time to time enlarge the time within which the first valuation lists under this Act shall be made by the overseers of all or any of the parishes in the union, and, for ensuring a uniform and correct valuation of every parish in the union, may direct that any existing valuation of the rateable hereditaments in any parish be revised, in whole or in part, or a new valuation of such hereditaments be made by the overseers.

Committee
may enlarge
the time for
making valua-
tion lists, and
may give
directions
concerning
valuations
and valuation
lists, and may
appoint per-
sons to make
the same.

Or the committee may, with the consent of the board of guardians of the union, after notice shall have been sent to every guardian thereof, in any case appoint some person for either of the purposes aforesaid, and may direct such person to make and sign the valuation list instead of the overseers, and every valua-

tion list so made and signed shall be delivered by such person to the overseers of the parish to which the same relates.

Valuation lists
to be depo-
sited for in-
spection, and
afterwards
transmitted to
the committee.

17. The valuation list for each parish, made and signed by the overseers, or delivered to them, as hereinbefore provided, shall be deposited by the overseers in the place in such parish in which rate books are deposited or kept, and a copy of such valuation list shall be forthwith delivered to the board of guardians.

And the overseers shall give public notice of the deposit of such list on the *Sunday* next following the deposit of such list, and such notice shall be given in the same manner, and all persons assessed or liable to be assessed to the relief of the poor of such parish shall have the like right of inspecting, and of demanding and taking copies of and extracts from such list, as in the case of a poor rate allowed by the justices.

And the overseers shall, at the expiration of *fourteen days* from the time of the notice given of the deposit of such list, transmit the same to the committee.

And any overseer or other ratepayer within the union shall have the right of inspecting and taking copies of and extracts from any of the lists so transmitted.

Objections to
valuation list.

18. Any overseer or overseers of any parish in any union who shall have reason to think that such parish is aggrieved by the valuation list of any parish within such union, or any person who may feel himself aggrieved by any valuation list on the ground of unfairness or incorrectness in the valuation of any hereditaments included therein, or on the ground of the omission of any rateable hereditament from such list, may at any time after the deposit as aforesaid of such list, and before the expiration of *twenty-eight* days after the notice of the deposit as aforesaid, give to the committee and to the overseers a notice in writing of his objection, specifying the grounds thereof ;

And where the ground of any objection shall be unfairness or incorrectness in the valuation of any hereditament in respect of

which any person, other than the person objecting, is liable to be rated, or the omission of such hereditament, also give notice in writing of such objection, and of the ground thereof, to such other person.

19. The committee shall hold such meetings as they may think necessary for hearing objections to the valuation lists, and shall, twenty-eight days *at least* before holding every meeting for hearing objections to valuation lists, other than meetings by adjournment, cause notice of such meeting to be given to the overseers of the several parishes to which such lists relate, and such overseers shall, on the *Sunday* next following the receipt of such notice, publish the same in the manner in which notice of a rate allowed by justices is by law required to be given.

Committee to
hold meetings
to hear
objections.

And the committee may at any such meeting hear and determine such objections, or may from time to time adjourn any such meeting, and adjourn or postpone the hearing or further hearing and determination of any such objections, and may, where they think fit, direct notice of any such objections to be given by the overseers or by the persons objecting to third parties before the further hearing thereof.

But the committee shall not be required to hold a meeting for hearing objections to the valuation list of any parish, unless such notice in writing as hereinbefore mentioned of some objection or objections thereto have been given to the committee.

And where a meeting is holden for hearing objections to the valuation list of any parish, the committee shall not hear any objection to such valuation list unless such notice *as aforesaid* of such objection have been given to the committee and to the overseers :

And where the ground of such objection is unfairness or incorrectness in the valuation of any hereditament of any other person than the person objecting, or the omission of such hereditament, also to such other person by the person objecting :

Except where the overseers, by themselves or any other person

on their behalf, and in the case aforesaid such other person as aforesaid, by himself or any other person on his behalf, consent to the hearing of such objection, and in such case the committee may, if they see fit, hear the same.

And where the committee see fit to hear the same, they shall act in relation thereto in like manner as if notice of such objection had been duly given.

Board may direct further valuation and correct valuation lists, and when corrected to approve the same.

20. The committee may, whether any objection be or be not made to any such valuation list, and either *before* or after any meeting for hearing objections, make such alterations in the valuation of any hereditaments included in any valuation list, and insert therein any rateable hereditament omitted therefrom, and make such corrections in names, descriptions, and particulars in any valuation list, and upon such information, as to them may seem sufficient.

And may, with the consent of the guardians as aforesaid, appoint or employ a person to survey and value the rateable hereditaments comprised in any such valuation list, or any of them, or omitted therefrom, or may take such other means as they may think necessary for ascertaining the correctness thereof;

And when the committee have heard and determined all such objections as aforesaid, and have made such alterations, insertions, and corrections in any valuation list as to them may seem proper, they shall approve the same under the hands of *three* members of the committee present at the meeting at which the same is approved, with the date of such approval.

Valuation list when altered to be deposited, &c.

21. Where the committee make any alteration in the valuation of any hereditaments included in, or insert therein any rateable hereditament omitted from any such valuation list, they shall cause such valuation list, with such alteration or insertion, to be deposited for inspection in manner hereinbefore provided concerning the valuation list made by or delivered to the overseers.

And shall cause the like notice to be given of such deposit as is required in the case of a valuation list so made or delivered as aforesaid, and shall appoint a day, not less than *seven* days, nor more than *fourteen* days, from the re-deposit of such valuation list, for the hearing of any objections to the valuation list as so altered ;

And when the committee have heard and determined any such objections, or have made such further alterations, insertions, and corrections in such valuation list, they shall approve the same in manner hereinbefore provided.

22. In case any ratepayer shall under the existing law appeal to the special sessions or quarter sessions, against any rate made for the relief of the poor in any parish, and the result of such appeal shall be to amend the rate appealed against, the assessment committee shall alter the valuation list of the said parish in conformity with the decision so made.

If on appeal a rate is amended the valuation list to be altered.

23. Every valuation list, when approved by the committee, shall be delivered to the overseers of the parish to which the same relates, and shall be preserved at the like place and in the like custody, and be subject to the like resort thereto, and be delivered over from time to time in like manner, as the books are, wherein rates and assessments for the relief of the poor for the same parish are entered, and shall be produced by the overseers before the justices, upon application for the allowance of rates, and at the special or general or quarter sessions when any appeal is to be heard, and also at such times and places as the committee may from time to time direct.

Custody, &c., of valuation list after approval.

24. Every valuation list approved by the committee, and delivered to the overseers of the parish to which the same relates, shall, with and subject to the alterations and additions for the time being made therein or thereto by any supplemental valuation lists so approved and delivered, be the valuation list *in force* in such parish, except in the case of any parish, as is hereinafter

What shall be deemed valuation lists in force.

referred to, in which the poor rate, or assessment for the poor rate, is made under the authority of a local Act, until a new valuation list in substitution for the same be approved and delivered in like manner.

Overseers to prepare supplemental valuation lists in case of additions to or alterations in the rateable property of the parish.

25. When and so often as any property not included in the valuation list in force in any parish becomes rateable, or where, by reason of any alteration in the occupation of any property included in such list, such property becomes liable to be rated in parts not mentioned in such lists as rateable hereditaments and separately valued therein, and when and so often as it shall appear to the overseers that any rateable property included in such list has been increased or reduced in value since the valuation thereof, whether by building, destruction of building, or other alteration in the condition thereof or otherwise, the overseers of the parish in each of the cases aforesaid *shall*, as soon as conveniently may be, make a supplemental valuation list showing the annual rateable value according to the judgment of the overseers of the property so become rateable, or of the parts so become liable to be rated separately, or of the property so increased or reduced in value, as the case may be.

Committee may from time to time direct new valuation, and new or supplemental valuation lists.

26. The committee by their order may from time to time, where they see fit, upon the application of any person aggrieved by the valuation list in force in any parish, or where they themselves think the same expedient, direct a new valuation of all or any of the rateable hereditaments in such parish, and a new valuation list in substitution for such valuation list as aforesaid, or a supplemental list in substitution for any part thereof or in addition thereto, to be made by the overseers, or the committee may, with such consent as aforesaid, appoint a person for such purposes.

And the committee may, in directing such new valuation, and the making of such new or supplemental valuation list, give and make all such or the like directions and provisions in relation thereto as they are authorized under this Act to give and make

in relation to the valuations and valuation lists first directed and authorized to be made under the Act.

32. If the overseer or overseers of any parish in any union shall have reason to think that such parish is aggrieved by the valuation list of any parish within such union, whether it be—

Appeal against
valuation lists.

On the ground that the rateable hereditaments comprised in the valuation list of such parish are valued at sums beyond the annual rateable value thereof,

Or on the ground that the rateable hereditaments comprised in the valuation list of some other parish in such union are valued at sums less than the annual rateable value thereof,

It shall be lawful for such overseer or overseers, with the consent of a vestry summoned for the purpose of considering the expediency of giving such consent, to appeal to the quarter sessions for the county or borough in which the greatest number of parishes belonging to the union is situate, or, in case the number of parishes in any two or more such jurisdictions is equal, to the quarter sessions for the county or borough having jurisdiction over the parish in which the workhouse of the union is situate, at the sessions to be holden after the expiration of a month after the allowance of and deposit of such valuation list as aforesaid, against such valuation list of the parish which shall appear to be over-valued or under-valued ;

And if in any case any such overseer or overseers appeal against the valuation list of any other parish on the ground that the rateable hereditaments in such list are valued at less than the annual rateable value thereof, such overseer or overseers shall give *fourteen* clear days' notice in writing previous to the first day of the said quarter sessions at which the appeal is to be made, of the intention to appeal, and the grounds thereof, to the overseers of the poor of such parish, and to the guardians of the union comprising such parish ;

And if any overseer or overseers of any parish appeal against

the valuation list of such parish on the ground that the rateable hereditaments in such list are valued beyond the annual rateable value thereof, such overseer or overseers shall give *fourteen days* notice in writing, previous to the quarter sessions at which the appeal is to be made, of the intention to appeal, and the grounds thereof, to the guardians of the union in which such parish is situate;

The said court shall be empowered to hear and determine such appeal, and either confirm such valuation list, or correct such irregularities or inaccuracies as shall be proved to exist therein, as to them may appear fair and just;

But no such valuation list shall upon such appeal be quashed or destroyed in regard to any other parish, unless the court deem it necessary to proceed to the making of an entire new valuation list as hereinafter provided,

Hearing and
determining
appeals.

§3. It shall be lawful for the court of quarter sessions, upon any such appeal, instead of hearing the said appeal, to adjourn the same, and to order, upon the application of the appellant or respondent in such appeal, a survey *or* valuation of any of the parishes in respect of which such appeal shall be made, and to fix the next or some subsequent sessions for receiving such survey *or* valuation, and for hearing and determining such appeal.

And such court shall also thereupon appoint a proper person to make such survey *or* valuation, and the person so appointed shall have power, with or without assistants, to enter upon and survey, measure, and value all the hereditaments liable to be assessed to the rates for the relief of the poor within the parish or parishes mentioned in such order

And such survey and valuation shall be reported to the quarter sessions on adjournment fixed as aforesaid for receiving the same, and the court then and there assembled shall hear and determine the said appeal in the manner hereinbefore set forth.

34. The charges and expenses of any such survey and valuation so ordered shall be deemed costs in such appeal, and abide the event thereof. Costs of valuation and appeal.

And the court before which any such appeal is heard and determined, may order the costs in and about the appeal to be paid by either the appellant or respondent party, as they in their discretion may think fit.

But where any appeal is made, on the ground that the rateable hereditaments of any parish comprised in the valuation list of such parish are valued beyond the annual rateable value thereof, if the court on such appeal determine in favour of the appellants, such court shall ascertain the costs and charges incurred by such appellants in and about such appeal, and shall order the board of guardians of the union in which such parish is situate, to pay the same to the appellants out of the money raised for the common fund for the several parishes in such union.

39. The expenses of making any valuation and valuation list of any parish, or any of such expenses, whether such valuation and valuation list respectively be made by the overseers, or by any person appointed by the committee, shall be charged upon the poor rates of such parish, if the valuation made by direction of the committee shall exceed by one-sixth the amount of the valuation delivered to them by the overseers, and upon the common fund of the said union, if the valuation so made as last mentioned shall not exceed by one-sixth the valuation so delivered as aforesaid. Expenses of valuation, &c. to be paid out of poor rates.

UNION ASSESSMENT COMMITTEE AMENDMENT ACT, 1864.

CLAUSES—1, 2, 3, 4, and 5.

Notice of
appeal against
poor rate to
be given to
the assessment
committee of
union.

1. Before any appeal shall be heard by any special or quarter sessions against a poor rate made for any parish contained in any union to which the Union Assessment Committee Act, 1862, applies, the appellant shall give twenty-one days' notice in writing previous to the special or quarter sessions to which such appeal is to be made of the intention to appeal, and the grounds thereof, to the assessment committee of such union: Provided, that after the first day of August next no person shall be empowered to appeal to any sessions against a poor rate made in conformity with the valuation list approved of by such committee, unless he shall have given to such committee notice of objection against the said list, and shall have failed to obtain such relief in the matter as he deems just; and which objection, after notice given at any time in the manner prescribed by the said Act with respect to objections, the committee shall hear, with full power to call for and amend such list, although the same has been approved of, and no subsequent list has been transmitted to them, and if they amend the same shall give notice of such amendment to the overseers, who shall thereupon alter their then current rate accordingly.

Committee
may, with
consent of
guardians, be
co-respondents.

2. The assessment committee of such union may, with the consent of the guardians of such union, after notice shall have been sent to every guardian, appear as respondents to such appeal, but in the name of the guardians of such union, in like manner, and with the same incidents, and subject to the same liabilities, and entitled to the same remedies and rights as in the case of persons other than the overseers to whom notice of appeal may be given.

3. The costs which the committee may incur in consequence of becoming respondents to such appeal, or of having received notice thereof, shall, if not recovered from the appellants, as well as any costs the committee may be ordered to pay to the appellants, be paid by the guardians and charged to the common fund of the union, unless the court before whom such appeal is heard shall direct that such costs, or any part thereof, shall be charged to the parish, the rate of which is appealed against.

Provisions as to costs of committee on appeals.

4. Where a valuer is appointed by the assessment committee he shall make his valuation in writing, showing the particulars of the several hereditaments comprised therein, and the amounts at which he has valued the same respectively, and shall sign such valuation, which shall be open to inspection in like manner and with the same incidents with respect to the taking of copies or extracts as the minute books of the committee.

Valuation to be made in writing.

5. Within fourteen days after the transmission to the assessment committee of any valuation or supplemental valuation list the committee shall give notice to every railway, telegraph, canal, gas, and water company named in such list as the occupier of any property included therein, and not having any office or place of business in the parish to which such list relates, of the sum or sums set down as the rateable value of the property purporting to be occupied by such company or companies, and such notice may be served by being transmitted through the post to the principal office of the company, or one of their principal offices when there shall be more than one.

Notice of assessment to be given to certain companies.

EXTRACTS FROM THE STATUTE

6 & 7 WILL. 4, c. 96.

All rates to be made on the net annual value of the property.

No rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the *net annual value* of the several hereditaments rated thereunto, that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rentcharge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent :

Provided always, that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities (if any) according to which different kinds of hereditaments are now by law rateable.

Justices acting in petty sessions to hold four special sessions in the year to hear appeals.

6. And be it enacted, that the justices acting in and for every petty sessions' division shall four times at least in every year hold a special sessions for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church of the said parishes, twenty-eight days at the least before the holding of the same ; and such special sessions shall and may be adjourned from time to time by the justices there present, as they may think fit ;

And at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein, which decision shall be binding and conclusive on the parties, unless the person or persons impugning such decision shall within fourteen days after the same shall have been made cause notice to be given in writing of his, her, or their intention of appealing against such

decision, and of the matter or cause of such appeal, to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice shall enter into a recognizance before some justice of the peace, with sufficient securities conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof:

And such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party or parties appealing or appealed against as they shall think proper, and their determination in or concerning the premises shall be conclusive and binding on all parties, to all intents and purposes whatsoever ;

Provided always, that no such objection shall be inquired into by the said justices in special sessions unless notice of such objection in writing under the hand of the complainant shall have been given, seven days at least before the day appointed for such special session, to the collector, overseers, or other persons by whom such rate was made. Seven days notice to be given of objections.

CHAPTER I.

GENERAL REMARKS UPON CLAUSE 15 (a).

It will be noticed that in clause 15, in order, most probably, to do away with the difference of opinion that seems hitherto to have prevailed as to what was intended to be included in the term gross rental in the Schedule,—that though the net rateable value, as defined in the 6 & 7 Will. 4, c. 96, is left untouched, the gross rental is specifically defined as follows:—

“The gross estimated rental, for the purpose of the schedule to this Act, shall be the rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenants’ rates and taxes, and tithe commutation rentcharge, if any.”

And the Act of 6 & 7 Will. 4, c. 96, says,—

“No rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of *the net annual value of the several hereditaments rated thereunto.*”

Which, for fear of ambiguity, is further explained and defined to be—

“That rent at which the same might reasonably be expected *to let from year to year*, free of all usual tenants’ rates and taxes, and tithe commutation rentcharge, if any,

and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent: provided always, that *nothing herein contained shall be construed to alter or affect the principles or different relative liabilities, if any, according to which different kinds of hereditaments are now by law rateable.*”

Now it will be seen that this definition of the net rateable value of the 6 & 7 Will. 4, c. 96, really consists of two parts (though the phraseology is not very clear, but that is a

common failing of Acts of Parliament), the former, extending down to "tithe commutation rentcharge, if any," being the gross rental; the latter, extending to the end, being the net rateable value obtained by the reduction of the gross rental by the landlord's charges of repairs and insurance. By this separation, made necessary by the former portion of the clause only being altered by the 15th clause of the Union Assessment Committee Act, the latter portion remaining untouched, the meaning of the original clause of the 6 & 7 Will. 4, becomes manifest. Clear, however, as the meaning of gross rental is now, it was not always so; and much and serious inconvenience has resulted in consequence, especially as regards the operation of the income tax.

The poor law board, in their earlier instructions to parish valuers, based those instructions upon the supposition that the gross rental was such an amount as would be paid by weekly tenants for whom all the rates, taxes, &c., were paid by the landlord, in which case, the difference between the gross rental and net rateable value would, of course, include the tenants' rates and taxes (and tithe commutation rentcharge, *if any*), as well as repairs and insurance. And the income tax commissioners at first made this gross rental their base or rateable value for the income tax; the result being, that where a landlord received from his tenant, under a yearly tenancy, the rent of £100; instead of taking this as the gross rental, this £100 was increased by the tenant's rates and taxes, say £25, and the gross rental was put down at £125; upon which sum, as his yearly income, the landlord's income tax was calculated; the £25, be it remembered, never having even so much as gone into his pocket. A principle most unfair, certainly, and evidently so, when the amount of this false gross rental became placed side by side with the rateable value which, taking the usual deductions from the £100 for repairs and insurance, would amount to about £80. The two, then, standing side by side, thus,—

Gross rental £125. Rateable value, £80.

So that a landlord, who had only a beneficial interest in the property of £80, was called upon to pay a tax upon £125; this amount being frequently made the basis of the county and other rates.

It is unfortunate that the misconception of the proper construction of the clause has been only recently discovered; though how that misconstruction could have continued so long it is very difficult to understand. The word *free* (*a*) has no noun with which it can agree but that of rent, and that rent, being a landlord's claim, could never be said to be free of the usual tenants' (not landlord's) rates and taxes, &c., if the landlord had to pay them out of his rent. The only possible way that the error in the first instance might have arisen seems to be this,—it may be that the poor law commissioners were in some degree influenced by what would of necessity occur in the case of farms.

In ascertaining the rent that a tenant would give for a farm, the incoming tenant cannot lose sight of the question of rates. To him, as he has to pay them, the amount of poor's rates and other tenants' charges becomes a serious matter. For, after going carefully into the question what the net receipts would be upon the year's cultivation, besides claiming for himself such tenants' profits as he might consider himself entitled to, and deducting that from the net receipts, he would have to make a further deduction for the rates and tithe rentcharge,—the residue alone being the amount of rent that he could afford to pay to the landlord. The poor law commissioners may have taken the first balance and not the second, as the gross rent, which it virtually is in some sense, as it is an amount that a tenant must first come at before he can deduct for the rates and tithe rentcharge. It is not so, however, really, as will be readily seen in the following case.

Take two farms in different parishes, equally good, but the rates

(*a*) What the participle "*deducting* therefrom" agrees with, it is impossible to say.

in the one, double those in the other. It would follow that in both cases, the net profits of working would be the same, and as the tenants' profits would be the same, the difference would be the same, which, according to the old instructions to surveyors would represent the gross rental. Now, supposing that the rates in one parish are much higher than in the other, which, as the tenant in each case would have to pay them, would leave the rent that one tenant could afford to give much higher than the other—there would result this anomaly, that a landlord having a farm (of equal productiveness in one parish with another farm in another parish), for which farm he was receiving less rent, owing to the heavy rates, &c. that his tenant had to pay, than what the landlord received from the other farm, would find himself rated for an equally beneficial occupation with the landlord of this other farm, though the respective rents received from the two are very different.

To take the gross rental under the original instructions given to surveyors, is evidently by levying equal taxes upon two parties differently situated, to act unfairly, which no government ought to do; but to take the gross rental at all, even as now defined by the Union Assessment Committee Act, 1862, is still very unfair, as the new gross rental does not represent the really beneficial occupation of the landlord. It says in the 30th clause of the Union Assessment Committee Act, 1862, —

“ When the assessment committee for any union shall have approved valuation lists for all the parishes comprised within such union, the guardians of such union, in computing the amount of contribution to the common fund for the several parishes, shall thenceforward take the annual rateable value of the property in such parishes respectively from the valuation lists for the time being.” Making the annual rateable value the measure of contribution to the union expenses, or, in other words, the landlords' yearly beneficial ownership of the premises, the measure of the contribution for the premises to the common fund. Now, if the

(net) rateable value (for it will be seen on turning to the Schedule at the end of the Act, that the column is simply headed rateable value, and not net rateable value, so that the terms net rateable value, and rateable value, and annual rateable value are synonymous), be deemed a fair mode of apportioning the union charges among the several parishes of a union, and parishes have to contribute in proportion, not to their gross rentals, but to the aggregate of their assessable, or net rateable property. If so,—and it certainly is so,—why should not the income tax be calculated upon the same? why should not the rateable value be made the measure of the income tax? And why should not these valuation lists be used for that purpose, and for the county and other rates? Even taking the new gross rental under the Union Assessment Committee Act will not prevent the greatest injustice, all of which, without any trouble, would be got rid of, if the rateable value, and not the gross rental, was made the basis of assessing for the income tax. For instance, there are two properties, for each of which the respective landlords receive each £100 per annum, under a yearly tenancy, not a weekly; this £100 will be the gross rental. Now, one property is brick, and just built, and will require no repairs for three or four years to come; the other is old, built of wood, and needs £30 per annum to maintain the premises in a state to command the rent. Have these two landlords the same beneficial ownership? Do they each derive the same income from the premises? Certainly not. The income of the one is £90, of the other £70. Ought they to be charged income tax alike?

Again, compare different classes of property—a farm, for example, and the wooden buildings already referred to. The reduction from the rent of the farm never exceeds 10 per cent. for repairs and insurance, while 30 per cent. is often that of the other. Ought these two owners to be charged alike? Certainly not.

CHAPTER II.

GROSS RENTAL.—NET RATEABLE.

1. (*Where the Tenant is not his own Landlord.*)

The gross rental under the Act is the rent (*a*) that a landlord receives from a yearly tenant,—the tenant paying the rates and taxes and tithe commutation rentcharge, if any. So that to the landlord the *rent* received by him is correctly stated as being free of charges which the tenant has to pay. And the net rateable under the Act is the gross rental (or rent) reduced by the landlord's liabilities of repairs, insurance, and other expenses, if any, necessary to maintain the premises in a state to command that rent. Or it is the rent which the landlord receives under a repairing lease, where the tenant repairs and insures, in other words, the yearly value to the owner of the property, after allowing for every yearly deduction, whether actual or otherwise, necessary to maintain the property in a state to continue to command that rent. It follows from the above, that as the gross rental is the rent receivable under a *yearly* tenancy where the tenant pays rates and taxes, the rent receivable by the landlord for *weekly* tenements (*b*) does not represent the gross rental, as the rates and taxes are not paid by the tenant. Consequently, to convert this weekly rent into a yearly one, the rates and taxes have to be deducted. The amount of these rates and taxes becomes an element therefore in the consideration of the question, as with a fixed gross weekly rent, the gross rental would be higher or lower, as the rates were lower or higher, varying inversely.

As to the deductions for repairs, it has been decided that it is not necessary to have actually laid out in any one year the

(*a*) Not absolutely, but subject to modifications hereafter explained.

(*b*) See weekly tenements scheme in Appendix.

amount allowed for the year ; it is sufficient to show that such an amount would be needed in the course of time. If the landlord neglects to use this amount in repairs, it is his own fault, and brings its own punishment with it in diminished rent.

It must be understood that the amount of reparation needed to a building varies very much with the age, character, and material, and that though the gross rental of two buildings may be the same, yet the net may be very different, and that though the rent of the same building may be the same for several years, and therefore its gross rental remain the same, yet the net rateable will after some years materially diminish, owing to the numerous repairs that will become necessary. The system adopted, therefore, of treating all properties alike, and striking off a fixed per-centage of from 20 to 30 per cent. from the gross to get at the net, is manifestly unjust to the holders of inferior class properties, more particularly when the rent of a considerable portion of the better class property is made up of garden accommodation and other ancillary advantages not subject to any depreciation at all. This unfairness prevails most strikingly when the assessment includes, with the house, several acres of land. And yet cases have been known where parties in occupation of such properties have claimed to have the usual per-centage (with inferior house property) calculated upon the whole. The above is a parish evil, and affects the ratepayers within the parish, simply as to their parish contributions among themselves, and can be remedied by an appeal. A similar evil, however, and much more serious in its consequences, exists as between parish and parish, among the parishes of a union, arising from some parishes being rated at rack-rent, that is, at their full rateable value ; others at 10 per cent., some at 15 per cent., some at 20 per cent., others perhaps at 30 to 40 per cent. reduction. Those lower rated contributing unequally with the other parishes to their common union burthen. This evil the union Assessment Committee Act, 1862, seeks to remedy, by furnishing to parishes the same powers

of appealing against inequality and unfairness on the part of other parishes, as the parishioners had against each other.

It must not be lost sight of, that as regards the former evil, the individual ratepayer, besides his new remedy under clause 18, has, under clause 22, Union Assessment Committee Act, the same power of appeal directly to the quarter sessions, if he prefers it, or to the petty sessions, and thence, if dissatisfied, to the quarter sessions, either on the ground of being over rated himself absolutely, or of being unequally or unfairly rated as compared with others within the parish, as he had before the passing of the Act, which Act was evidently passed to supply remedy for the second evil, powers being given to the committee (*see Clauses 32 and 33 of Union Assessment Committee Act, 1862, Preliminary Chapter,*) appointed under the Act, to see that the parish valuation lists were made upon an uniform principle; and in case of any presumed unfairness or errors of judgment on the part of the committee as between the several parishes of the union, powers being also given to any one parish fancying itself aggrieved, to appeal to the quarter sessions for redress.

Rent, however, even though distinguished as above between that paid under a lease and under a yearly tenancy, does not absolutely constitute the measure of net annual value. To make rent the measure, it must be "from year to year;" not any one year's rent only; for though the rent actually given under lease may be a guide to the *annual* value, yet it is not necessarily the measure of it. It may, or may *not* at all, be equal to the average. Thus, the rent agreed to be paid by one railway company to another may, in many cases, be widely different from what the line would let for from year to year. They may have rented the line under various circumstances, and with various objects. To retain a district to themselves, or to shut out an opponent, it may have been worth *their* while to have given that rent, though it would not have been anybody else's.

Or they may have entered into the agreement improvidently, under a misconception, and upon an erroneous estimate of the value of the line, either "*per se*," or as a "feeder." Still there is the rent, and they must pay it, though, were the line now in the market, it would not, perhaps, fetch one-third of what they had agreed to give.

So also with house property. A speculative builder runs up a block of houses; he wants to get them let; to do so, he accepts any offer almost for a few of them; either gives a short lease, or lets them at a three years' agreement. The rent so paid under such circumstances is not the measure of the net rateable value under a lease, nor of their gross rental under a three years' agreement.

Rent evidently, therefore, cannot be made the measure of either house or railway gross or net rateable values. Still, though not the measure, it becomes, in many cases, the best basis to start from in determining that value, especially in house property, where the various circumstances that would tend to modify it are easily accessible.

Lord Denman, in his remarks upon the subject (of rent) in the case of the *Queen v. The Great Western Railway Company*, in the *Tilehurst* case (*a*), seems to have fallen into some error, or to have had his words misquoted. He says—

"If the rate in question had been imposed on land forming any part of the branch lines themselves, it is clear that the circumstances of the receipts not equalling the rent—in other words, that the line was worked at a loss,—could not have affected the rate. The occupation would still have been beneficial in the sense in which that word is used for the purpose of assessing the rate."

Thus far he is perfectly correct, and had he ended here, all would have been well; but he goes on to say—

"And the rent which, from whatever motive the appellant found it worth while to give, would have regulated the amount."

(*a*) *Law Journal*, vol. 15, (N. S.), p. 88, *Magistrates' Cases*.

Only if those motives were permanent in their nature, and unchangeable in their measure; otherwise, they might cease altogether, or they might become less weighty from year to year. The rent *once* given may be no measure of the annual value (*a*). If the property were held under a lease, the terms of the lease would have to be taken into consideration in the first place, and in the next, it would have to be considered whether property had risen or fallen in value. Were it, on the contrary, held under a yearly tenancy, the rent paid would be the best criterion, and in most cases would correctly represent the gross rental, but not always. But in either case, where the landlord and tenant are different persons, there is little difficulty with house property in ascertaining the rateable value.

GROSS RENTAL.—NET RATEABLE.

2. (*Where the Tenant is his own Landlord.*)

Comprising railways, gasworks, waterworks, canals, and other public companies.

In this case, however, where the landlord and tenant are one and the same person—that is, where the tenant is his own landlord, there must of necessity be considerable difficulty in determining it, especially if the property be of a new kind, and none similar in extent or character be found in the neighbourhood. With house property this circumstance does not exist, but with all other property held by public companies and large manufacturers it does, and the question becomes seriously compli-

(*a*) See South Eastern Dorking case, 3 E. & B. 491; 23 L. J. (N. S.) M. C. 84.

cated—take, for instance, gas companies, waterworks, canals, mines, and, lastly, railways. All these are in the occupation of their owners, and though they may have paid rent for their offices, yet in most cases, being in possession of the fee simple, they have never done so for their works. These works, however, being the means of a beneficial occupation of the soil, have a rateable value, and are assessable to the relief of the poor in proportion to the extent of that beneficial occupation, or to the rent that a tenant would give to come into possession of that occupation.

Now, the difficulty that exists in all these cases is that of separating the beneficial occupation, or the net receipts, into their two component parts, belonging respectively to the landlord and tenant.

Stock in trade is not rateable.

Profits in trade are not rateable ;

but where certain profits arising from certain gross receipts are attached to a locality, and under transfer of occupancy cannot be separated therefrom, those profits would form a consideration in the opinion of an incoming tenant, and would influence him in the rent he would give, as, if he could secure *some* of them, he would be willing to hand over the "*remainder*" to the landlord. The difficulty is to distinguish between making these profits the measure and the "element" of the rent ; they must not be the former, or you would be rating profits ; they must be more than the latter, or you would be losing sight altogether of what constitutes the main feature of the case in the eyes of the tenant, *i. e.*, his own profits.

Under these circumstances it has been usual, *with respect to all questions of this kind*, for the contending parties to consider the gross receipts as including all the elements of the rent.

The gross receipts comprehend, of necessity, the three following items :—The tenant's working expenses, which deducted from the gross receipts become the profits above referred to,

which profits are then divisible into the tenant's profits, and the landlord's rent, whatever the subject matter of the occupation may be.

TENANT'S WORKING EXPENSES.

The first of these items can be generally obtained from the company's books, and admit of positive proof.

In the case of Railways.

The working expenses consist of,—

1. Locomotive expenses.
2. Carriage and waggon expenses.
3. General charges.
4. Tenants' rates and rentcharge.

In the case of Water and Gasworks.

1. Cost of manufacture.
2. Cost of distribution.
3. General charges.
4. Tenants' rates and rentcharge.

The working expenses deducted from the gross receipts will leave the net receipts or profits, being a sum to be divided, as has been said before, between landlord and tenant.

SUBDIVISION OF PROFITS BETWEEN LANDLORD AND TENANT.

In determining the respective proportions to each, we must consider that "no concern can be entered upon without capital," and according to the amount of capital invested, so does the tenant expect his profit; for out of the amount left as above belonging to landlord and tenant, it is clear that a tenant

would be willing to hand over the remainder as rent to the landlord, *only* after he had paid himself that amount of liberal profit upon his capital which he might fairly expect upon the amount invested. It has never been denied that the tenant is entitled to be allowed his tenant's profits; but the amount of per-centage has been the source of constant misunderstanding.

Where the stock is of a perishable nature, the tenant is also to be allowed a yearly sum for keeping that stock up, unless the necessary repairs and renewals are done yearly, and charged already in the working expenses.

The tenant's (which is a first) claim, consists, in the case of all companies, of his profits upon the money required to buy the stock to work the business, including the profits upon his own skill and labour, and of a fund to be laid aside yearly to maintain the market value of the stock.

These items are all matters in dispute, not as to whether they should be admitted, but what their amount should be.

These tenants' allowances deducted from the net receipts will give the gross rent belonging to the landlord.

This gross rent will include all the landlord's repairs and insurance of the subject matter of the occupation.

In the case of Railways.

Maintenance (a) of way, works and stations (in its fullest sense).

Insurance.

In the case of Gas and Waterworks.

Maintenance of reservoirs; filter beds.

Maintenance of mains and pipes.

Maintenance of buildings, plant, and insurance.

These, in all cases, are in dispute.

(a) The Act 6 & 7 Will. 4, uses simply the word *maintain*, and "other expenses (if any) necessary to maintain them in a state to command such rent."

CHAPTER III.

ASSESSMENT OF RAILWAYS.

(*As one Whole, or where the Receipts are Uniform throughout.*)

In applying these general principles to ascertain the rateable value of railways, it will be best, at first, for clearness' sake, to treat the railway as *one entire concern*, divisible among the parishes according to *length* mileage.

Now, as the accounts are made out half-yearly, there will be no difficulty in ascertaining the gross receipts of the whole line, and the total expenses incurred in earning them. These items are necessary to enable the directors to decide upon the dividends. It will be requisite to remove out of the receipts all such items as, though serving to increase the dividend, are not due to the profits of working directly or indirectly, as well as out of the disbursements items not properly chargeable to the receipts.

The disbursements are generally classified thus, viz. ;—

1. (*b*) Locomotive account.
2. Carriage account.
3. General charges.
4. Rates, taxes, government duty, and insurance.

No. 1. *Locomotive account*—includes repairs and renewals, as well as working expenses, together with the necessary labour for both.

No. 2. *Carriage account*—includes the same.

No. 3. *General charges*—includes items that, were the company managed by a tenant, would not be incurred, or, if he

(*b*) The companies begin with *maintenance of way* ; but this is a landlord's deduction, and should be introduced only after the gross rental has been ascertained.

were allowed them, he would be satisfied with less interest for his capital.

And also includes terminal expenses, which are expenses incurred on account of goods traffic, for work done at the stations, for porters and agents employed in collecting, distributing, and delivering the goods.

No. 4. *Rates and taxes and government duty—*

All these items being deducted from the gross receipts, the balance is the net revenue due to the whole concern, line, and stations.

As this revenue would have to be shared between the landlord and tenant, what is due to the tenant must be first ascertained, as the balance only will be the landlord's.

It was at one time considered, that as the tenant on coming in would necessarily have to take to the stock in hand, or moveable plant, since without this the railway could not be worked, and as he would, if he had not the money in hand, be obliged to borrow it, he would have to pay interest thereon, and that consequently he ought to be allowed interest upon the money borrowed. This is not the opinion of some persons *now*. See Pashley's judgment, and detailed observations upon the percentages for tenant's capital. He would also expect to receive a percentage for himself as tenant's profits upon the same stock. Again, as the working stock and permanent way would be in constant use, and would require renewing at some time or other, he would look for a yearly deduction to meet these also. The renewal of the stock he would be entitled to as a tenant. Should renewals have taken place in the year, and been already charged for in the disbursements, they could not, of course, be charged for again.

The deductions (of the tenant) claimed are, viz. :—

A per-centage upon the moveable plant, for interest (disputed);

ditto ditto for tenant's profits;

ditto ditto for depreciation;

and tenant's rates and taxes already allowed.

The remainder is due to the landlord as rent, or GROSS RENTAL.

TO ASCERTAIN THE NET RATEABLE.

The net rental is obtained by a further deduction of the item which generally comes first in the railway companies' accounts, and is designated *maintenance* of way.

This item of maintenance of way includes not only maintenance of way, properly so called ; but repairs of stations, bridges, and renewal of rails, chairs, sleepers, &c.

The amount thus ascertained as above for net rateable, both of line and stations, having to be divided among parishes, some of which have, while the rest have not, stations within them, the amount due to the stations must be first deducted, and then the remainder divided among the parishes in proportion to their length. Increase this by the amount due for the stations in the several parishes, and the result is the *rateable value* of the railway in each parish.

The above is the principle recognized by both companies and parishes, though, at one time, the railway companies wished to substitute *tolls* (a) for gross receipts. The facts or figures which

(a) The first or almost the first railway case submitted to the Court of Queen's Bench was that of the parish of Mitcheldever, *Queen v. The London and South-Western Railway*. The question was, whether the rateable value should depend upon the tolls (advocated by the company), or upon gross receipts (contended for by the parish), and whether, when calculated upon either of these principles, as a whole, the rateable value should be apportioned among the parishes in respect to their comparative lengths, or to their respective gross receipts ; in other words, whether it should be upon the length mileage, or upon the parochial system. The court held, that the gross receipts were to be made the basis of the rate, and not the tolls ; and that the subdivision among the parishes should be made upon the parochial system, and not upon length mileage.—*Law Journal*, No. 11, (N. S.), Magistrates' Cases, p. 93.

In the case of the parish of Leighford, *Queen v. The Grand Junction Railway Company*, the latter again contended that the tolls were the proper basis

are used to apply the principle are still in dispute. Before, therefore, going into the next case, where the mileage division now assumed is, in conformity with the decision of the Court of Queen's Bench discarded, and where the parochial principle is carried out, it will be desirable to go into these differences of opinion, which it is more easy to do, as regards the items of expenditure above enumerated, while the case is a simple one, than when it becomes complicated, and to point out those items of deduction, in which the parties differ, and consider them *seriatim*.

I. LOCOMOTIVE ACCOUNT,

divisible into

Working Expenses, which include labour, such as guards, engineers, stokers, cleaners, &c. ; and materials, viz., tallow, oil, coke, &c. ; and

Repairs and Renewals ; with wages to mechanics, labourers, and the necessary materials.

Now, all these items are fairly chargeable against the receipts, being disbursements necessarily incurred in earning those receipts, and in maintaining the tenant's stock.

Renewals cannot be charged again unless it is proved by experience that the amount for renewals charged in the company's accounts in any one year were less than what the average ought to be ; that average being measured by a sinking fund set aside yearly at compound interest, to meet, by its realization, the cost of replacing the stock at the end of a given time. The company would be entitled to charge the average, though in a given year they might actually spend less ; because, were they to lay

out more than the average they would not be allowed it, no more than the landlord of a house who paints once every three years would be allowed to deduct the whole so spent in that one year.

II. CARRIAGE AND WAGGON EXPENSES.

These charges are principally for repairs and maintenance, and are open to the same remarks as those for locomotive repairs and maintenance.

III. GENERAL CHARGES.

Many of these charges are for direction and management ; being really expenses incurred as between the managing body and the shareholders, &c., &c., and therefore ought not to be allowed.

IV. RATES, TAXES, AND GOVERNMENT DUTY.

No objection can be taken to any of these items of deduction.

TENANT'S ALLOWANCES.

The amount of these disbursements being correctly ascertained and deducted from the gross receipts, the next items for deduction are—the “tenant’s allowances,” which are *now* calculated upon the assumed value of the “moveable plant,” engines, carriages, tools, furniture, &c., as best representing the capital of the tenant.

The results of the different way in which companies and parishes look at the question will be seen roughly in the following comparative estimate of an hypothetical case.

COMPARATIVE ESTIMATE OF ONE HUNDRED

According to views of Appellants.

GROSS RECEIPTS:—

Being the entire earnings of the railway for one year
from all sources of traffic £400,000

WORKING EXPENSES, including—

Maintenance of way	}	£200,000
Locomotive expenses		
Carriage and waggon expenses		
Miscellaneous expenses		
Government duty		
Tithe rent charge		
Rates and taxes		
<i>Net receipts</i>		<u>£200,000</u>

OCCUPIER'S SHARE, including—

Interest on capital	}	£100,000
Trade profits		
Insurance against risks and casualties		
Depreciation of rolling stock		

Gross estimated rental £100,000

STATUTABLE DEDUCTIONS:—

Annual sinking fund, to provide for the renewal of way
and works £16,000

Net rateable value of the railway and stations .. £84,000

MAIN LINE OF RAILWAY, MILES LONG.

According to views of Respondents.

GROSS RECEIPTS:—

Being the entire earnings of a railway, say 100 miles long,
from all sources of traffic £400,000

WORKING EXPENSES:—

Maintenance of way omitted here	..	..	..	—
Locomotive expenses	..	..	..	} 180,000
Carriage and waggon expenses	..	..	..	
Miscellaneous expenses (excluding risk and casualties)	..			
Government duty	..	..	..	
Tithe rent charge	..	..	..	
Rates and taxes	..	..	..	}
<i>Net receipts</i>	..	..	..	£220,000

OCCUPIER'S SHARE:—

Trade profits, including interest on capital	..	..	} 50,000
Insurance against risks and casualties	..	..	
Depreciation of rolling stock, usually included in working expenses	..	..	
<i>Gross estimated rental</i>	..	..	£170,000

STATUTABLE DEDUCTIONS:—

Maintenance of way and works, which includes renewal of the same	..	..	..	} 30,000
	..	..	..	
<i>Net rateable value of the railway</i>	..	..	..	£140,000

BRIEF HISTORY OF RAILWAY RATING UP TO 1868.

Before enumerating the several cases that have been brought before the court of Queen's Bench, a few observations will be found useful. They will materially contribute to a better understanding of the subject.

A few years ago railway rating, like railway making, was an entirely new subject. Surveyors had to apply their experience on other subjects in the best way they could to making a valuation upon this. The valuation of house property furnished no precedent, but that of farms to some extent did. The principle, previously adopted in farms, the surveyors of the day applied to the valuation of railways, bringing whatever experience they had in other matters to bear upon any subordinate points that were incidental to the application.

The principle of farm valuation is simply this: deduct the working expenses from the gross produce or farm receipts, and apportion the remainder between the tenant and landlord.

This principle they applied to railways in this way, they took the gross receipts of the line, they deducted the working expenses, and the remainder they divided between the tenant and landlord, in the best way they could, as they then understood the subject, allowing such amount for interest of capital invested in stock, tenant's profits thereon, and depreciation or loss for the year's wear and tear on its selling value, as was in conformity with their experience in other matters.

This being the case, it will be readily perceived that certain allowances may have been agreed to by the surveyors on both sides in their then ignorance of the subject, and embodied as facts in any case which may have been brought before the court of

Queen's Bench, very different to what further acquaintance with the subject would justify. And the inference is simple (which may be converted into an axiom for the general reader, an axiom they would do well not to lose sight of throughout the work), viz.—

Facts so found by the courts of Quarter Sessions or by arbitrators, whether by agreement in the case or by evidence, and by which facts the court of Queen's Bench is bound in laying down the law, are not necessarily facts (*vulgò*) after all.

And again, facts, which are not essential and which in no way affect the judgment of the court, but are only embodied in the finding of the sessions, become in no way part of the judgment of the court, nor recognizable as such, but remain simply facts in the case, not facts in *perpetuo*.

In some of the earlier cases, *Reg. v. London and South Western Railway Company*, in 1842 (a), and *Reg. v. Grand Junction Railway Company*, in 1844 (b), 5 per cent. interest was allowed, 20 per cent. tenant's profits, and $12\frac{1}{2}$ depreciation. In the Great Western case (*the first*) 5 per cent. interest, and 10 per cent. profit only was allowed by the sessions, adversely, although a higher sum was asked for by the company, and nothing was asked for depreciation.

This shows that within a period of from two to four years the surveyors on both sides had become better acquainted with the subject, and that per centages agreed to in their ignorance, were now become matters of serious dispute, and that when the attention of quarter sessions was called to the subject by the matter being in dispute before them, they recognized the increased experience of the surveyor, and rejected those facts which from agreement they had previously acquiesced in. And so did the railway companies on their part get wiser too, for in these same earlier cases the companies, in their ignorance of the

(a) 1 Q. B. 558; 11 L. J. (N. S.) M. C. 93.

(b) 4 Q. B. 18; 13 L. J. (N. S.) M. C. 94.

subject, went for £30 per mile only for renewal of way in one case, and £100 per mile in another.

In fact, both parties, companies and parishes, appellants and respondents, were quite new to the subject. They began in ignorance, they asked and conceded in the first instance what was unreasonable on both sides, they learned their business as they went on, and they are learning it still, and the reader should be careful to accept of nothing in the past as conclusive upon the future, unless what has been laid down by the court of Queen's Bench, and then only upon facts, not as legally understood, but as vulgarly understood.

About the year 1842, The London and South Western Railway A. M. 1842.
Company, who being themselves the sole carriers upon their line, South Western
Railway
Company.
had caused lists to be made out, in compliance with the requirements of clause 82 of the Amended Act, 1 Vict. c. 71 (*a*), showing what

(*a*) And whereas by the said recited Act it was enacted, that in all cases in which the said company should carry for their own profit any passengers, cattle or other animals, goods, wares, or merchandizes, articles, matters, and things, a separate account should be duly kept showing the amount of rates or tolls which would have been received by the said company for the use of the said railway in respect of such passengers, cattle or other animals, goods, wares, merchandize, articles, matters, or things, if carried by any other party or parties; and that the said company should also keep a separate account of the amount of the rates or tolls which should from time to time be received by the said company for the use of the said railway in respect of any passengers, cattle and other animals, goods, wares, and merchandize, articles, matters, and things, carried by any other party or parties; and that the overseers of the poor of the several parishes and townships through which the said railway should pass should have free access to and liberty to inspect the same at any times during the first fourteen days in the months of February and August in each year: And whereas it is expedient by means of a sufficient penalty to insure the keeping and inspection of such accounts; be it further enacted, that if the said company shall neglect or refuse to keep such account or to permit such inspection as aforesaid they shall forfeit and pay for every such neglect or refusal the sum of three hundred pounds, and the further sum of fifty pounds for every day during which such neglect or refusal may continue.

would have been the tolls they would have received had other persons, being carriers over their line instead of themselves, contended that the rateable value of their property should be based upon the toll, and not upon the receipts they themselves had taken. The court decided that the estimate should not be confined to tolls actually taken or estimated for, but should include such other value as might be included in the traffic receipts (*a*).

In this case it was conceded during the argument, that after having ascertained what the entire rateable value of the whole system should be, that that value was not to be apportioned per length mile, but in the proportion that the parish receipts bore to the entire receipts.

A. M. 1844.
Grand Junction
Railway
Company.

In the year 1844, The Grand Junction Railway Company (*b*) brought the matter again before the court of Queen's Bench, and claimed to have the tolls alone made the basis of the rateable value.

This company held a property which was worked under different circumstances to that of the South Western (*b*). They themselves exercised their trade as carriers. Other companies travelled over their line and paid them toll for doing so. Some parties found their own carriages and paid the company for the use of their locomotive power and for their station services. The company in this case contended that the tolls and compensation they received from other companies, and the tolls they would have received under their Act from other parties who might have worked the traffic they themselves worked, should alone be made the basis of the estimate of rateable value.

The court of Queen's Bench, through Lord Denman, C. J., ruled as regards this latter case, after reciting the several facts found in the case submitted to them, to the same purport as in the South Western case—viz., that notwithstanding a similar clause in the Special Act of this company as in that of the South Western, traffic receipts as well as tolls, should be included, and that all should be made the basis of the estimate. With respect to the apportionment of the whole rate-

(*a*) 1 Q. B. 558; 11 L. J. (N. S.) M. C. 93.

(*b*) 4 Q. B. 18; 13 L. J. (N. S.) M. C. 94.

able value to the particular parish, the court was not, any more than in the case of the South Western, called upon to give any opinion, as the parties by agreement had apportioned the whole according to *length mileage*. As to this his Lordship simply says,—“A principle very convenient in itself, and rightly adopted by consent.”

The decision given in these two cases unquestionably established these two principles,—viz., First, that all the sources of income are to be taken into account by the hypothetical tenant, who is supposed to be hiring the line, and that if this tenant were allowed his tenant's profits as a deduction, the parishes would not in so doing be rating the profits of trade; and, Secondly, that inferentially, if the exception proves the rule, the division of the whole rateable value according to mileage, would not have been confirmed if the point had not been, by consent, taken out of the jurisdiction of the court.

The judgment certainly does not however lay down the rule that sub-division should be according to receipts.

After that period this toll clause was omitted in the special Acts of all new railway companies, and in lieu thereof a clause was inserted in the Railway Clauses Consolidated Act, (an Act passed in 1845, and incorporated in all the special Acts,) which enacted as follows, viz. :—

“And be it enacted that the company shall every year cause an annual account in abstract to be prepared, showing the total receipts and expenditure of all funds levied by virtue of this or the special Act for the year ending on the 31st day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the directors or some of them and by auditors, and shall, if required, transmit a copy of the said account, free of charge, to the overseers of the poor of the several parishes through which the railway shall pass on or before the 31st day of January then next, which last-mentioned account shall be open to the inspection of the public at all reasonable hours on payment of the sum of one shilling for every such inspection.”

The next case was that of *Reg. v. The Great Western Railway Company*, known as the first Titchmarsh case (a), in which judgment A. M. 1844.
Great Western

(a) 6 Q. B. 179; 15 L. J. (N.S.) M. C. 80.

Company, first Tilehurst case, was given in 1846. In this case the appellants claimed a deduction for renewal of way. This the court refused, because the company had charged all the renewals that were required to be done against capital; secondly, the appellants claimed a deduction for stations elsewhere rateable; this the court allowed. They also claimed interest upon monies expended in getting up the company. This was disallowed. They claimed deductions in respect of the payment of £10,000 as income tax. The court considered this claim unsatisfactorily stated and refused it (a). They also claimed to take into account the higher rates they would have to pay if the increased assessment should be established. The sessions had allowed this, but the court said the sessions would have been perfectly justified in not allowing it to stand part of the case. They further claimed a deduction for the losses on the two branch lines. This the court also refused, alleging that though as between themselves and their shareholders they may deduct for the loss, as it must be treated as money laid out on the improvement of the main line, yet, as between them and the parishes on the main line, the outlay incurred in the loss upon the branches could not be deducted from the profits on the main line. As to the first of two other points raised, viz.,—Should the tenant's capital be taken at the same amount as the receipts, or should it be taken at what the plant actually cost, the court declined to give an opinion, though as to the other, they indicated their opinion that the sessions were not called upon to go back a period of years in order to ascertain what the original value really was (b).

(a) A railway company are at once owner and occupier. As owner or landlord they are bound to pay income tax upon the rent, (which, however, by the Income Tax Act, cannot be made an item of deduction for the poor rate), and therefore whatever portion of this £10,000 was due from them as landlords, was properly struck out. The remainder, which would be calculated upon their profits of trade, and which as tenants they would be bound to pay, they would certainly be entitled to deduct, as the hypothetical tenant would have to reckon it as one of his necessary outgoings. And *pro tanto* he would be able to give so much less rent.

(b) This last point will be fully raised and decided in the North Staffordshire Case. (30 L. J. (N. S.) M. C. 68.) Vide *postea*, p. 59.

After the decision in the Great Western Case, some few years elapsed before any further decision was given. In 1851, however, decisions in three cases were given at once; the railway companies being the London, Brighton and South Coast (*a*), the South Eastern Railway (*b*), and the Midland Railway (*c*). In the case of each of these companies a common point was raised for the opinion of the Court, that point, which in the case of the South Western Railway Company (*d*), had been agreed to on one principle, and in that of the Grand Junction (*e*) on the opposite, viz., which was the correct mode of arriving at the rateable value of a railway in any parish, the mileage principle or the parochial? (*f*). A. M. 1851.
Brighton,
South Eastern,
and Midland
Companies.

In consequence of this point being common to the three cases, and of the importance of the interests involved, though the Brighton rate appealed against was made in 1847, the Midland rate in 1848, and the South Eastern in 1848, no decision was given till 1851.

Mr. Justice Coleridge, after reciting the facts stated in the case, says, "the first question is as to the principle on which the rate was to be imposed; whether upon what is called the mileage principle, that is, by treating the whole line, trunk, and branches as an entire subject-matter, and the whole rateable value, however constituted, as entire, and then dividing it among the several parishes simply, according to the distance which the line passes through each; or upon the *ordinary* principle of ascertaining the actual rateable value of the land occupied by the company in each parish, by the rules which are applicable to any other land occupied by other bodies or persons for other purposes;" and giving judgment in the Brighton case, rules, "we are of opinion that the respondents are right in their principle of assessment." That is, the mileage principle is wrong because it is not parochial. It may not be uninte-

(*a*) 15 Q. B. 313; 20 L. J. (N. S.) 124.

(*b*) 15 Q. B. 344; 20 L. J. (N. S.) M. C. 137.

(*c*) 15 Q. B. 363; 20 L. J. (N. S.) M. C. 140.

(*d*) 1 Q. B. 558; 11 L. J. (N. S.) M. C. 93.

(*e*) 4 Q. B. 18; 13 L. J. (N. S.) M. C. 94

(*f*) Or "not the mileage."

resting to state here, that in the Brighton case, the company contended for the *mileage* principle; in the Midland case, and in that of the South Eastern, the companies contended for the *parochial* principle. The Brighton parish was on the main line. The Midland and South Eastern parishes were upon branches. The parishes concerned were also contending for opposite principles.

The question, therefore, had evidently become an important one, and a final settlement was imperative.

In the Brighton company's case there were other points raised for the decision of the court, which it may be desirable briefly to mention.

Between Croydon and Reigate the line of railway belongs half to the Brighton, half to the South Eastern, each company being empowered to run over the other company's half free of toll. The parish of Croydon is within the northern half, which belongs to the Brighton, and over which the South Eastern pass free. The parish of Croydon, besides the earnings belonging to the traffic of the Brighton Company, had included in their assessment of that company's occupation in Croydon, an amount for such tolls as the South Eastern Company would have paid if they had not been empowered to pass over toll free.

Was the parish right in so doing?

Upon this point the court delivered the following judgment :—

“The third question arises on what is called the exchange toll.

“The substance of the transactions between the appellants (London, Brighton, and South Coast Company), and the South Eastern Company, out of which this arises, appears to be this : that the traffic of the latter is to pass free over a certain portion of the line of the former, in consideration of the traffic of the former passing free over a certain portion of the line of the latter. A certain distance, between two and three miles, of the appellants' line within the parish of Croydon is affected by this arrangement. We think that the sessions rightly decided this to be rent in kind earned by the land. It seems to us

“ exactly the same in substance as if so many tickets were daily issued,
 “ without money paid for them, to the South Eastern Company, in
 “ return for so many received from them. The tickets mutually trans-
 “ ferred would, on either side, represent so much money earned. But
 “ then, we think these earnings must be subject to exactly the same
 “ deductions as if they were received in money.”

It must be understood, with reference to the concluding remark of the court, that tickets are not tolls, and that in requiring the usual deductions to be made, it is only as from tickets issued, which being equivalent to fares, would represent the gross earnings. Tickets represent tolls (*a*), *plus* working expenses, *plus* tenant's profits upon the working.

There was another point raised in the Brighton case, which was an important one, *viz.* :—The rate being made in November, 1847, the parish having only the half-yearly accounts up to 30th June, 1847, accessible to them when the rate was made, contended that the rate should be based upon the receipts and outgoings up to that time, and consequently that no deductions for plant introduced between June and December should be taken into account. The appellants contended that they should. What does the court say upon the subject? The court says :—

“ The only remaining point in this case turns upon the narrow
 “ question, from what date the overseers ought to make their calcu-
 “ lation as to the assessment upon the company ?”

After recapitulating the facts, the learned judge proceeds :—

“ The overseers, in making a prospective rate, are to make it on
 “ the supposed prospective value, ascertained by them, as well as they
 “ can, from the latest evidence in their power as to antecedent value ;
 “ it cannot be required of them that the assumed value and the actual
 “ value should correspond with perfectly minute accuracy ; and they

(*a*) Tolls themselves being net rateable *plus* maintenance of way, *plus* profits on tolls.

“ were quite justified in making their rate upon the latest published account, if that was the latest information they had, or could be reasonably expected to procure; and we should not think a rate ought to be quashed where this had been done. But if the company had communicated to them this new fact before the rate was made, no doubt they ought to have taken it into account if they believed it; and if they did not, and on appeal, the company had satisfied the sessions of the fact, the appeal ought to have succeeded.”

It is important that the decision on this point should not be misunderstood. The court simply says,—the overseers making a rate in the last half of a year are justified in using the facts of the first half to form their opinion (which they must do to be in time for their rate) as to what the facts in the last half would probably be; but if these facts, after the rate has been made, and the last half of the year has been past, turn out differently to what the facts of the first half had led them to suspect, then the real facts must be taken in lieu of the hypothetical ones; but the decision does not say that some of the facts of the first half are to be taken, and some of the facts of the second half. This would have been the case if the overseers had dealt with the receipts of the first half, and charged them with the costs of the second half's working, this second half-year, from more stock having been introduced, having most probably higher receipts of its own.

The *receipts* of the last half should have been taken as well as the *expenses* of the last half; that is, supposing the working of the last half would have shown a materially different result to that of the first.

A. M. 1852. The next case was that of the second Tilehurst (Great Western
Great Western Case), a parish situated on the Reading and Hungerford branch.
Railway,
second
Tilehurst.

The decision in this case was given in 1852.

The rate had been made on the 20th April, 1849. The litigants must either have been dissatisfied with the decision given in 1851, or must have considered it not sufficiently comprehensive.

In this case the respondents, the parish, having to do with a branch, so far act upon the decision as to the parochial system as to make the

parochial earnings the basis of the assessment, and they apply the earnings to arrive at the rateable value thus :—

They ascertain the rateable value of the whole concern,—line and branches ; they take the gross receipts of the whole, and they say :—As the gross receipts of the whole are to the parish receipts, so is the rateable value of the whole to the rateable value in the parish.

The court say, that “in assuming that the rateable value upon the branch bears the same proportion to the receipts of the branch as the rateable value upon the trunk bears to the receipts upon the trunk, the respondents are wrong, and they therefore reject their principle.”

The appellants adopt a different mode. They ascertain the gross receipts over the whole system, and the gross expenses ; also the receipts in the parishes ; and, as they cannot get at any actual expenses in the parish, they estimate the expenses.

They deduct the expenses from the receipts in each case, and finding the rateable value of the whole, they allocate that value in proportion to the respective net profits of the whole and of the parish.

The objection taken by the court to this mode adopted by the appellants was, that “in estimating the expenses in the parish, which they were obliged to do to get at the net profits, they had taken the entire expenses on the branch, and then divided them per length mile, adopting a mileage, which, though more limited as confined to the branch, was yet a mileage after all, and therefore incorrect.”

The judgment concluded by stating that “the court are unable to adopt either of the modes suggested to them, and therefore the case must go back to the arbitrator.”

This case, simply disapproving of two principles, which no one in the present day would think of contending for, would be valueless, and might have been omitted, but for the clear, sound, and able exposition which Lord Campbell makes as to what the principle ought to be.

His Lordship says :—

“The remaining question is, What is the net rateable value of the Lord Campbell, C. J.
“two miles and a half? Now as the net rateable value is that which
“remains of the gross receipts after all just deductions made, it might
“seem at first sight that we might confine our inquiry to the two

“miles and a half, and that we only encumber the investigation use-
 “lessly by introducing into it any consideration of the gross and
 “rateable value of the whole line.’ But the circumstances of a rail-
 “way make this absolutely necessary. The inquiry may become,
 “and undoubtedly does become, more complicated and difficult
 “thereby; but it would be wholly incomplete and illusory, even in
 “its result, unless we did so. Of the outgoings of a railway, some
 “are general, having no more connexion with, or influence on, one
 “part of the whole line than on any other, incurred for the sake of
 “the whole line, and contributing to the profits everywhere. Of
 “course these must be distributed, and to every mile must be appor-
 “tioned some share, on whatever principle the apportionment is to
 “be settled. Some, again, seem purely local—a tunnel here, an in-
 “clined plane there—yet even these are contributory to the
 “earnings everywhere: without these, the traffic on either side could
 “have no existence. It would be wrong to set these wholly and
 “exclusively against the receipts earned in the same part of the line.
 “We need not dwell on this, because, in principle, some distribution
 “is on all hands agreed to be necessary: the only difficulty is in
 “determining what is to be adopted for making it justly—a *difficulty*
 “*we believe actually insurmountable in fact, if strict mathematical*
 “*accuracy is insisted upon.* How, then, are the deductions from the
 “total gross revenue, which constitute the difference between it and
 “the total net rateable value, to be apportioned, so as to arrive at the
 “actual sum which constitutes the rateable value of the two miles
 “and a half? There is no difficulty in giving the first answer: it
 “must be done on what is called the parochial principle. We are
 “dealing with a parochial question, with one in which the interests
 “of the several parishes on a line of railway are quite distinct. We
 “are to ascertain what expenses are incurred in earning the gross
 “receipts on the two miles and a half; what charges, parochial or
 “otherwise, they are liable to; what is fairly to be deducted for
 “tenant’s profits; and so on: the same process in kind is to be gone
 “through with regard to the two miles and a half as would be with
 “regard to the whole line, if that were all in one parish. This prin-
 “ciple does not preclude a consideration of charges and expenses
 “*wherever arising locally*, which are necessary for keeping the

General
outgoings
must be
apportioned
over the
whole line
of a railway.

Tunnel and
gradient.

Deductions
must be made
upon the
parochial
principle.

Proper method
of applying
the parochial
principle.

“ subject of the assessment at the value which is made the measure
 “ of the assessment. And further, we must add that, wherever it is
 “ found that such charges and expenses do, in fact, equally apply to
 “ every mile of railway, it is a convenient and allowable mode to
 “ arrive by a mileage division at the proportionable part to be assigned
 “ to the mile in any particular parish. This is no departure from the
 “ parochial principle. If it be assumed, as to particular charges
 “ (‘ central superintendence,’ for instance), that a separate investiga-
 “ tion of them as they actually arise in, or are referable to, a parti-
 “ cular parish, would lead us to the same result as a mileage distribu-
 “ tion of the whole, it becomes, by the hypothesis, but another mode
 “ of arriving at it: in many cases it may be more convenient and
 “ just; in some, perhaps, it may be the only practicable mode.”

A mileage
 division is an
 allowable
 mode of
 apportioning
 expenses
 applicable
 alike to every
 part of a line.

Mileage.

The next case in the order of time was that of *Reg. v. Newmarket Railway Company*, judgment in which was given in 1854.

The Newmarket Railway Company were empowered by their Act
 to make a branch railway to join that of the Eastern Counties, who,
 in consideration of the probable increase of passengers on their own
 line by their having the control of the Newmarket line, agreed to
 supplement the net profits of the Newmarket Railway Company
 as far as three per cent. upon the capital, or £5,000 per annum.

A. M. 1854.
 Newmarket
 Railway.

The net earnings of the Newmarket Railway not being sufficient
 to pay the said dividend of £3 per cent., the Eastern Counties Com-
 pany, in pursuance of their agreement, paid to them £3,705 to make
 up the deficiency. Held (per Coleridge, J., and Erle, J.; dis., Lord
 Campbell, C. J.), that in rating the Newmarket Railway Company
 to the relief of the poor, the sum of £3,705 ought not to be taken
 into consideration as increasing the rateable value, as it was not
 an earning of the branch, nor money paid by way of rent for the
 use of the branch, or springing from the profits of the occupation, but
 a payment arising from a collateral contract of guarantee in case the
 profits of the occupation should fall short of a certain amount.

The point raised in this case was decidedly that of contributive
 value, viz.: whether over and above the net profits of conveying the
 traffic over the Newmarket line the parish were entitled to take into
 account the value of the occupation of the Newmarket line arising

elsewhere by the profit got out of the same passengers between Chesterford and London, and which value the Eastern Counties themselves had put at £3,705.

Mr. Justice Coleridge and Mr. Justice Erle ruled that they were not entitled to take the amount supplemented by the Eastern Counties into consideration. Lord Campbell ruled that they were, but as the two other judges were of a different opinion, he gave judgment for the appellants.

In the same year (1854) judgment was also given in the celebrated Dorking case.

A. M. 1854.
Reading,
Guildford, and
Reigate Line,
Dorking case.

The Reading, Guildford, and Reigate line is a line running from Reigate on the South Eastern, joining the South Western at Guildford, and terminating at Reading on the Great Western. Under powers in their Act of incorporation, the Reading, Guildford, and Reigate Company leased their line for 1000 years, at a yearly rent of £41,000, to the South Eastern Company, who thenceforth became the sole occupiers of, and carriers on, the line. The Reading, Guildford, and Reigate Company was afterwards amalgamated with the South Eastern Company, who were bound by the Act of Amalgamation to pay the shareholders of the Reading, Guildford, and Reigate Company, annuities equal to the rent of £41,000. The Reading, Guildford, and Reigate line brought a great deal of additional traffic to the main line of the South Eastern Railway, and that company thus derived benefit from the Reading, Guildford, and Reigate line, as a feeder to their main line, in respect of traffic conveyed on that line. The Reading, Guildford, and Reigate line, if in the market, might be an object of competition in consequence of the rivalry existing between the South Eastern and other companies, the traffic on whose lines would be increased by the possession and control of it. The annual gross earnings on the Reading, Guildford, and Reigate line, less the proper deductions, fell short of £41,000. The South Eastern Company being rated as occupiers of so much of the Reading, Guildford, and Reigate line as passed through the parish of Dorking, upon a valuation founded upon the said rent of £41,000, appealed against the rate. The points raised for the opinion of the court were—

1st. Whether the appellants were in the first rate properly assessed

upon the rent agreed to be paid to the Reading, Guildford, and Reigate Company, and in the second rate upon the perpetual annuity.

The court ruled *unanimously* that they were not properly so assessed.

2nd. Whether the appellants were liable to be assessed in respect only of the net profits derived from the traffic passing through Dorking, irrespective of any rent paid by the company, and of the value of the Reading, Guildford, and Reigate line as increasing the traffic on the main line.

3rd. Or whether the respondents are entitled to take into consideration, in their assessment, the value of the line to the appellants, as an integral part of the South Eastern Railway, in addition to the net profit, as derived from the traffic passing through the parish of Dorking?

The court (with the exception of Mr. Justice Erle, who dissented,) consisting of Lord Campbell, Mr. Justice Coleridge, and Mr. Justice Crompton, ruled that the South Eastern Company were properly assessable, in respect not only of the net profits derived from the traffic passing through Dorking, but also in respect of the rent paid, and the value of the Reading, Guildford, and Reigate line to them, as an integral part of their railway, and as increasing the traffic on their main line.

It may be remarked here, that Mr. Justice Erle, the only dissenter from this judgment, is merely maintaining the same opinion he had expressed in the Newmarket case (*a*), where the court (himself and Mr. Coleridge as a majority) strictly confined the Newmarket branch to its own profits, and that Lord Campbell, who was then a dissenter, is only maintaining his previous opinion also, but that Mr. Justice Coleridge seems to have changed his opinion upon the subject since the Newmarket case, as he is now supporting the view of Lord Campbell, whereas he differed from him in that case.

This decision has never since been disturbed. Contributive value, as for convenience sake we will call that value, which (over and above the value of the net profits of a branch) may be attached to a branch by reason of its connection with a main line, seems by his decision to be fully recognized as a *principle*. Subsequent decisions have, in fact, confirmed it.

(*a*) 3 E. & B. 94; 23 L. J. (N. S.) M. C. 76.

It is considered by some persons that the court, in recognizing the principle of contributive value, are "breaking in upon the parochial system, inasmuch as it goes further than any other (decision) towards importing into the rateable value profits not strictly referable to the parish;" but this is certainly not Lord Campbell's opinion, for he says in his judgment in the Newmarket case (*a*)—

"The railway *within* the respondent's parish is rendered more valuable and productive by something connected with the rise of it in another parish, and, according to decided cases, its rateable value *within* the respondent's parish is thereby enhanced *within* (not *outside*) the respondent's parish." And, in conclusion, to prevent mistakes, he adds—"I wish to adhere to the recent as well as the earlier cases on this subject, with this caution, that when we were determining that in rating railways, the parochial, not the mileage principle was to be adopted, the court did not mean to intimate that the assessable value of land in one parish ought not to be increased by a profit derived from it by the occupier, as occupier, in consideration of an advantage derived from it in another parish." Lord Campbell evidently considers the contributive principle perfectly compatible with the parochial, when, in his judgment, in the second Tilehurst case, although affirming that the deductions must be parochial as well as the receipts, he says—"Of the outgoings of a railway, some are general, having no more connection with, or influence on, one part of the whole line than on any other, incurred for the sake of the whole line, and contributing to the profits elsewhere;" he distinctly recognizes this fact, that expenses incurred outside a parish may affect the share within the parish, in other words, as my friend Mr. Francis Guise says, "No class of expenses are properly to be regarded as *local*." If this is so, surely, by parity of reasoning, the receipts for the conveyance of traffic over trunk line and branch together are not necessarily to be divided on a mileage principle, but parochially, upon the respective portion of the entire fare that the company may have adopted as between the trunk and the branch when they settled that entire fare (*b*), that division

(*a*) *Vide supra*, p. 49.

(*b*) See *Reg. v. North London Railway*, (St. Pancras case,) 32 L. J. (N. S.) M. C. 146, and the division of the fare between the Blackwall Company and themselves.

of the entire fare being necessarily based upon the *profits* that in either case would be obtained out of it upon the trunk, as compared with those upon the branch.

The next cases were those of *Reg. v. Overseers of Fletton (a)*, and *Reg. v. North Staffordshire Railway (b)*, decided in 1861; and *Reg. v. Lord Sherrard (c)*, decided in 1864.

In the case of *Reg. v. Overseers of Fletton*—

In the year 1848, the old Peterborough station belonging to the Great Eastern Railway Company, by whom it was built, and by whom alone it was first occupied, in the parish of Fletton, the London and North Western entered into an agreement, by deed, with the Great Eastern Railway Company, by which they bound themselves, in return for the user of a certain portion of the Great Eastern Company's line, and of part of the station premises, to pay annually the following rent and expenses, viz. :—

First.—Such a sum as shall be equal to one mile's gross earnings, after deducting £40 per cent. thereof, to cover all expenses for each year upon that portion of the London and North Western Railway which lies between the Peterborough and Silson stations. Second.—Such sum annually as shall be equal to £5 per cent. per annum upon the costs of the land and buildings to be occupied exclusively by the London and North Western Railway Company. Third.—Such sum annually as shall be equal to £7 per cent. per annum upon one-half of the outlay of the station and buildings jointly used by the said two companies, with the exception of land, and as shall be equal to £5 per cent. upon the land occupied by such jointly used station and buildings. Fourth.—One moiety of the expenses of the management and conduct of the said joint station. Fifth.—That the London and North Western Railway should keep in repair so much of the said station and buildings as they should exclusively occupy, and should repay the appellants all the outlay they had made on internal fittings. Sixth.—That the Eastern Counties should keep in repair, at their own

(a) 30 L. J. (N. S.) M. C. 89.

(b) 30 L. J. (N. S.) M. C. 68.

(c) 33 L. J. (N. S.) M. C. 5. The rule was obtained in 1861, but judgment was not given till 1864.

expense, the station and buildings to be jointly used, and should conduct the affairs and business of the station, and should deliver an account half-yearly of the expenses of management. Seventh.—That the receipts for the through passenger and goods traffic between Peterborough and London, whether passing over the Eastern Counties or the London and North Western Railway, should be equally divided every half year, and separate accounts should be kept, and to the company who should carry the largest amount of passenger traffic the sum of £10 per cent. should be allowed upon the excess over that of the other company, and £20 per cent. upon the excess of goods over that traffic of the other company.

Up to the year 1850 a large traffic was carried to London by the appellants. The station was laid out to accommodate it. The traffic was brought up to the appellants' line at Peterborough by the Great Northern Railway (which did not then extend towards London further than Peterborough), by the Midland Railway, and by the London and North Western Railway. In 1850 the Great Northern line was opened to London by a route shorter than that of the appellants' by twenty-six miles. Immediately upon this opening all the passenger and a great portion of the goods traffic was diverted from the Eastern Counties to the Great Northern Company. In 1857, by the opening of another line, the appellants lost the traffic which was brought to them by the Midland Company. In 1858 there was another similar loss, and since that year, with the exception of coals, the traffic at Peterborough, of all kinds, so far as the appellants are concerned, has been entirely confined to short local traffic. For the purpose of such traffic an ordinary road side station would have been sufficient, and in consequence of this diminution in the traffic, a large repairing shop and other buildings at the station were taken down, and others were allowed to fall into decay. Between Peterborough and Ely, to which branch the station in question belonged, the traffic was so small that the branch was worked at a loss by the appellants. There was a great competition for the coal traffic between the companies, and the rates were low. The buildings were, at the time of the rate in question, used for other purposes than those they were intended for. To an ordinary tenant, for any other purpose than that of a railway, the station would have been of no annual value, if he had been bound to maintain the buildings in a state of repair.

At the time of the appeal the annual value of the station, as used for the purposes of a station, after making all deductions, was estimated by the appellants at £635, but they, in estimating the said rateable annual value, did not take into account the said annual sum received by the appellants from the London and North Western Railway, under the agreement.

The question for the court was, whether the sum of money payable to the appellants, under the agreement of 1848, by the London and North Western Railway, ought to form part of the rateable value of the station.

JUDGMENT.

After recapitulating the facts of the case, the Lord Chief Justice proceeds :—

“The fallacy in the argument in favour of the appellants consists in looking at the London and North Western Company as the occupiers, and in considering what a tenant from year to year, coming in their place, would pay as rent for the use of the station.

“But the London and North Western are not occupiers of the station at all, they have only an enjoyment by way of user, in other words an easement. The occupiers are the Eastern Counties Company, subject to the easement of the other company, and the true question is, what would a tenant, coming into the place of the Eastern Counties Company, give for such an occupation? Now, it is plain that a tenant coming into their place, in considering what rent he would give, after the necessary deductions, would take into account, as increasing the value of the premises, the amount to be annually paid by the London and North Western for their use of the station. It is true the Eastern Counties, if they were to let the station, though they could of course only let it subject to the right of the London and North Western Railway to use it, might, taking a lower rent from their immediate lessee, reserve to themselves the receipt of the amount annually payable by the London and North Western Railway. Whether, under such circumstances, they would or would not still remain liable as occupiers, *quoad* a moiety of the line, the London and North Western Company having only an easement therein, it is unnecessary to decide.”

It is sufficient, in our opinion, for the present purpose, to say that *rebus sic stantibus*, they are assessable to the full amount of what they receive.”

“The true principle according to which the value of the occupation to the hypothetical tenant contemplated by the Parochial Assessment Act is to be estimated, is to assume the continuance of those circumstances which constitute the value to the existing occupier, unless it be made to appear that those circumstances are about to undergo a change. But there is nothing in the present case to lead to the supposition that the Eastern Counties Company will either forego their right, under a very advantageous agreement, which is to bind the London and North Western Company to a very remote future, or that the Eastern Counties Company will either let the station to any other occupier, or, if they do, will place such occupier, relatively to the other company, in a different position from that in which they themselves stand. At present, the Eastern Counties Company, as occupiers of this station, derive a profit, not only from their own use of the station, but also in respect of a sum annually paid by the London and North Western Company, and they ought in justice to contribute to the local burden in proportion to the entire benefit which they derive from the occupation, and we think that they fail legally, as they certainly do morally, in the attempt to withdraw themselves from such fair and equal contributions.”

This judgment was sought to be revised in *Reg. v. Lord Sherrard (a)*.

On the 24th May, 1861, a rule was obtained on the part of the overseers of the parish of Fletton, calling on Lord Sherrard and another, justices of the peace of the county of Huntingdon, to show cause why they did not issue their warrant of distress for two poor's rates assessed on the Eastern Counties. The rule was, by consent, enlarged in order to obtain the opinion of the court of Queen's Bench.

The case stated for the opinion of the court was similar to that in the first Fletton case, except that all the facts in that case were more fully set out and enlarged upon, and a fact found in error in the first case was corrected in this. The first case stated that the Eastern Counties were in occupation of the greater part of the station, and for the purposes of the case might be deemed to be the persons rateable in respect of the whole of it; the second case corrected this, for the London and North Western were now stated to be in the exclusive occupation of some part of the Peterborough Station, for which they

(a) *Vide supra*, p. 51.

were liable to be rated as occupiers. The Midland Counties had also the exclusive use of a goods shed and locomotive shed, but their trucks are worked to and from the goods shed by the servants of the Eastern Counties.

The goods and locomotive sheds occupied by the Midland are kept in repair by the Eastern Counties, while those occupied by the London and North Western are kept in repair by themselves. The agreement to use between the Midland and the Eastern Counties is not in writing, while that of the London and North Western is, and under the seal of the companies.

The questions for the opinion of the court were:—

1st. Whether the Eastern Counties were, for the purposes of rating, the occupiers of the whole or some, and what part of the station?

2nd. Whether the North Western were, for the purposes of rating, occupiers of some, and what part of the station?

3rd. Whether the Midland were occupiers of some, and what part of the station?

4th. Whether both, or which, or what portions of the sums payable yearly by the North Western and the Midland, respectively, were to be considered as part of the value of the occupation by the Eastern Counties with reference to the amount at which they were to be rated?

JUDGMENT.

Judgment was delivered by Cockburn, C. J., in the following words:—

“We have looked to this deed, and we adhere to the opinion which we formed the first time this question was before us. The effect of the deed is simply to give the right to the use of the station to the North Western Company, without taking the occupation out of the Eastern Counties Company. The latter are the occupiers, and must be rated for so much of the station as remains after what Mr. Keane (counsel for the prosecutors) gave up as being in the exclusive occupation of the North Western Company; and as to these buildings, &c., the rate must be amended, but as to the residue, of which the North Western Company have the use by the terms of the deed, we are of opinion that the occupation is in the Eastern Counties Company, and, therefore, as to that, the rate will stand.”

In this judgment, the answer to the first and second question is—The Eastern Counties are occupiers of the whole station except that which by deed is in the exclusive occupation of the London and North Western, themselves and servants, and is maintained by them, and which it was admitted by counsel, in the first case, should be rated to the London and North Western.

The answer to the third question (no reference was specially made to it in the judgment) seems by implication to be, No. The Midland are not occupiers, they are simply users.

To the fourth question no precise answer was required. It would of necessity be that amount which the London and North Western had agreed to pay for the use of that part of the station of which they had not the exclusive occupation, and the entire sum paid by the Midland, who had no exclusive occupation of any part of the station at all.

It appears from this judgment, and from the words used by Chief Justice Cockburn in delivering his first judgment in the Fletton case, that rent (*a*) received for an easement or partial occupation, must become a portion of the rateable value, but the rent paid for an entire occupation need not necessarily be so. It might or might not, according to whether that rent was reasonable or not. If no rent is paid for an easement, but another easement is given in exchange, as in the case of the Brighton and South Eastern Railway Companies in the Croydon case (*b*), where no money passed and *no* toll was paid, then the value of the respective easements must be calculated and assessed to the respective companies that granted them.

A. M. 1864.
Reg. v. Mid-
land Railway.

Another case, having reference to the same question, viz.,—that of dealing with easements, or a partial occupation by railway companies of each other's lines, was decided in the same year, 1864. It was *Reg. v. Midland Railway Company, ex parte the Overseers of Badgworth (c)*.

This case very much resembles the London, Brighton, and South Coast Croydon case. The line, in that case, between Croydon and

(*a*) The reasonableness of the amount having nothing to do with it.

(*b*) 15 Q. B. 344; 20 L. J. (N. S.) M. C. 137.

(*c*) 34 L. J. (N. S.) M. C. 25.

Reigate being part occupied by the Brighton, and part by the South Eastern, each company, by agreement, exercising their running powers over the other without payment of toll.

In this case the power is exercised under parliamentary enactments. The case states that the railway between Cheltenham and Gloucester was made under the Act 6 Will. 4, c. 77. It was intended to be broad guage throughout, but now it is of mixed guage, the broad guage being used by the Great Western, the narrow, by the Midland. The Act provided that the railway should be constructed of the mixed guage, and that on payment to the promoters, by the Birmingham and Gloucester Company, of one-half of the cost of making the whole railway, the one-half nearest to Gloucester should thenceforward be held in trust only for the Birmingham and Gloucester Company, whose powers should extend to it; and thenceforth the Birmingham and Gloucester Company obtained the sole direction of the railway, and became empowered to collect the tolls and profits, being bound at the same time to repair and maintain it. The Birmingham and Gloucester Company becoming amalgamated with the Midland, this half of the Cheltenham and Gloucester became the property of the Midland, and the other half nearest Cheltenham became amalgamated with the Great Western, and the whole line has been worked by both broad and narrow guage trains, the nigh rail of each road being used by both broad and narrow guage trains. The parish of Badgworth is upon the half nearer Cheltenham, which belongs to the Great Western, and which the Great Western maintain.

The overseers of Badgworth considered there was a joint occupation, and rated both companies. The Midland Company appealed, and contended they were not liable, and that they had only an easement. The two companies divided the entire cost of making the railway equally between them, but the traffic of the Midland over the Gloucester is much greater than that of the Great Western, who brought an action to recover tolls for the same. The House of Lords finally decided that neither company could claim tolls of the other.

The question for the court is,—Are the Midland rateable for their traffic over the Cheltenham half in the parish of Badgworth?

The judgment of the Court was that the Midland had only an easement, and were not rateable, that the Great Western were the

sole occupiers, and that they were rateable for their own traffic, and also for the value of the user by the Midland. The judgment delivered by Chief Justice Cockburn, and that by Mr. Justice Crompton, disposes most conclusively of the matter. In this judgment Chief Justice Cockburn seems to make the maintenance of the road the proof of ownership. He says,—“Another matter is the case of repairs. In the common case where the right to the soil is in the persons using the road, they have a right in it themselves, as incident to the right to the soil, to do anything that is necessary for the repairs of the road, &c., &c.” Further on, he says,—“It is “almost admitted by Mr. Dowdeswell, that if the Midland Company “paid tolls, the occupation would be in the Great Western.” They did pay tolls for some time till the House of Lords decided that having shared the entire expense of construction between themselves and the Great Western for the privilege of using the railway, each company was at liberty to use the whole railway to any extent they pleased without payment of tolls to the other, but that the non-payment or non-liability of tolls to each other for the respective easements were not to deprive the parishes of such a rateable value, chargeable upon the company in occupation, as might belong to the value of the easement to the company using. In fact the Great Western and Midland are rateable as follows:—

Great Western is rateable for traffic of Great Western + tolls of Midland. Midland is rateable for traffic of Midland + tolls of Great Western; and, consequently, between Gloucester and Cheltenham, the Rateable value of (traffic of Great Western + tolls of Midland) = Rateable value of (traffic of Midland + tolls of Great Western).

The decision in this case is worthy the consideration of railway companies granting running powers over their line to other companies.

They must not forget, in arranging the terms, that they themselves will have to pay rates upon the profits of the easement as well as their own.

The fact of their receiving no tolls, as in this case, and in that of the Brighton Company at Croydon, will not save them from being rated for such amount of toll as the traffic of the using company would fairly admit of. It is, however, somewhat difficult to under-

stand why a company should be rated upon a settled amount of toll agreed to be in excess, and yet should not be rated upon a deficient toll, although the amount of toll might be also settled. The Badgworth and the Croydon cases are scarcely reconcilable with the Fletton.

In this last case the fixed toll is to be the measure of the easement value, though the traffic is falling off. In the first two the fixed toll is *nil*, and yet the measure of the easement is to be based upon the traffic; suppose the fixed toll had been half what the increased traffic would justify, is the rateable value of the easement to be the fixed, or twice the amount? If the fixed, then companies could make any arrangements between themselves, only taking care to put some toll upon each other; and, if what the toll ought to be, how can this be reconciled with the decision in the Fletton case?

Having concluded the cases, which, beginning with the Fletton case in 1861, and terminating (at present) with the Badgworth case in 1864, we will turn back to the Rushton Spencer case (*a*), *Reg. v. The North Staffordshire Railway Company*, a case decided in 1861.

The questions raised for the decision of the court were questions principally concerning tenant's capital—what it included, and how it was to be estimated. The company being at once landlord and tenant, has invested in both landlords' and tenants' fixtures; the former would be rateable with the land, the latter would have to be purchased by the imaginary tenant, who would look for the usual allowances upon the amount. The first question would be, what are landlords, and what are tenants? Having settled what were and what were not to be taken by the tenant, the next question would naturally be,—Is the amount upon which the allowances are to be calculated, to be taken at the original cost of the stock when new, or at what it would be worth to sell at the commencement of his tenancy?

It might have been supposed that this first question had been settled in the Southampton case (*b*), and that the second question had

(*a*) 30 L. J. (N. S.) M. C. 68.

(*b*) 15 Q. B. 313; 20 L. J. (N. S.) M. C. 155.

also been disposed of in the Great Western case (first Tilehurst) (a). It is stated in the head notes of the Southampton case, that "attached to the freehold, and essential to the business of the company, was certain fixed plant, consisting of cranes, steam engines, shears, derricks, dolphins, and other like ponderous machinery, which, however, was capable of being detached as easily, and with as little injury to the freehold, as tenant's fixtures, put up for the purposes of trade and business, and usually valued as between incoming and outgoing tenants," and the judgment says,—“ fourthly, that the cranes, steam engines, and other ponderous machinery were properly included in estimating the rateable value of the company's premises.”

And in the Great Western case, it is stated that, “in ascertaining the tenant's profits, the rate had been made on a calculation of the per centage on the original value of the moveable stock, but the sessions found that at the time of the rate being made, that the value had decreased. The respondents contended that the per centage should be taken on the decreased, and not on the original value, and it was held that *it ought to be taken on the decreased value.*”

Still it was a serious question for the railway company, as the effect of establishing the principle that the turntables, cranes, weighing-machines, lathes, &c. were rateable, would be, not only to increase the rateable value of their property *pro tanto* throughout the line, but also to lose to them the deduction from the entire rateable, that the allowances upon the fixed and other machinery could give them, were they made a portion of the plant to be taken by the tenant.

The decision in this case as to this question was so entirely confirmatory of that in the Southampton Dock case, that one would have considered the question finally disposed of (c.)

A recent decision (*Reg v. Overseers of Halstead* (b) in 1866) appears, however, to railway companies, to be so conflicting with these decisions as regards some of the items herein enumerated, that it is doubtful whether the question in a more special form will not be again raised before the court of Queen's Bench.

The facts in the North Staffordshire case were these, the rolling

(a) 6 Q. B. 179; 15 L. J. (N. S.) M. C. 80.

(b) 31 Justice of Peace, 373.

(c) 15 Q. B. 313; 20 L. J. (N. S.) M. C. 155.

stock of the company had originally cost £356,843, and the turntables, cranes, weighing-machines, stationary steam-engines, lathes, electric telegraph and apparatus, office and station furniture, and gas works used for supplying the stations with gas, £52,950, but the sessions found that the rolling stock, which had cost £356,843, was only worth at the time of the rate, £285,843. The court of Queen's Bench held that the amount to be taken for rolling stock should be £285,843, not £356,843, and that out of the sum of £52,950, only what was due for office and station furniture, &c. (and they might have added, tools and stores, but in this case they do not appear to have been claimed by the company) should be taken as further tenant's capital.

There was another question, viz.,—"Whether the tenant was not entitled to add something for floating capital?" "Yes," the court held, *if it was necessary for him to have it,* but the court has no means before them of determining, whether in this case it is necessary or not. To another question stated to the court, and a most important one, the court neither gave any reply, nor enunciated any principle. The point raised as stated was,—“Fourth, whether the deductions to be allowed in respect of the station, buildings, and sidings, should have been ascertained by taking the rateable value at which the same were assessed to the relief of the poor, or by allowing 6 per cent. upon the original cost of construction as contended for by the appellants, or how otherwise a deduction should be made in respect of the said stations, buildings, and sidings?” The above was the question; the judgment was, “We are of opinion the deduction to be allowed in respect of the station, buildings, and sidings, must be calculated on the actual value at which *they ought to be assessed*, and not on the original cost of construction.” This is no answer to the question, the question being simply, how ought the stations to be assessed, or how is the actual value to be arrived at?

A similar question was put in the Great Western case (the first Tilehurst) (a). “*Fifthly*, additional parochial assessment not paid, but “which will be payable in consequence of the decision of the court “on rating railways.” The claim was so unsatisfactorily put, that the court said the sessions would have been perfectly justified in not allowing it to stand part of the case. In that case also, therefore, the question was not answered.

(a) 6 Q. B. 179; 15 L. J. (N. S.) M. C. 80.

It seems doubtful whether the question has ever been properly put, or whether it has even been clearly understood; the real point at issue being this :—

The railway passes through all the parishes; the stations are situated in a few only. Having got the value of the whole, due for line and stations, you must deduct what is due for stations to give to the parishes where the stations are, and then apportion the line; but what are you to deduct, the actual assessments of the stations as they appear in the rate-books of the several parishes, not two perhaps valued on the same principle or upon the same scale, or the assessments as they ought to be, and then, if so, what ought they to be? What is the principle upon which any one station should be assessed? The company contended in the Staffordshire case that 6 per cent. should be taken upon the cost, the court merely replied, “No; it should be valued properly,” but did not say how. The answer seems, however, to have been since given in the West Middlesex case (a), and afterwards directly and indirectly confirmed in other cases. This, however, will be all fully gone into when these cases come under consideration.

A. M. 1863.
North London,
St. Pancras.

The next case desirable to mention is that of the North London Railway Company v. The Parish of St. Pancras, decided in 1863 (b).

This also is a question of toll between one company and another, though in this case instead of that portion of the line for the use of which the toll was received being under assessment, it was the line belonging to the company who paid the toll.

The case may be shortly stated thus: The North London Railway Company work over the Blackwall Railway to Fenchurch Street; out of the gross fare received for travelling over the North London Railway and the Blackwall Railway, the North London Railway Company pay to the Blackwall Railway Company 1*d.* each single fare, and 1½*d.* each return fare. In ascertaining the parochial earnings over the North London Railway, should the tolls of 1*d.* and 1½*d.* payable to the Blackwall Railway Company be deducted from the entire fare, and the *remainder* be spread over the distance the passenger had travelled upon the North London Railway, or

(a) 28 L. J. (N. S.) M. C. 135.

(b) 32 L. J. (N. S.) M. C. 146.

should the toll paid be disregarded, and the whole fare be spread over the entire distance travelled and divided according to the distance upon the North London Railway and the Blackwall Railway respectively? The court held that the toll should be deducted first, and the remainder only be spread over the North London Railway.

The point really at issue between the company and the respondents seems never to have been raised, owing to the arbitrator having found as a fact in the case, that the sum paid by the North London Railway Company was a *reasonable* sum. The respondents contended that this was not the case, that the sum was in excess, and, being in excess, that it ought to be ignored altogether, and that a *fair* sum only should be allowed to the Blackwall Railway Company, such as the North London Railway, looking at the amount of the entire fare, could afford to give them. The court held, that the 1*d.* and 1½*d.* agreed to be paid were to be deducted. Did the court do so because the arbitrator had found the amounts reasonable, or did they ignore that finding altogether? If they ignored it, then this case establishes conclusively that the entire or *through* fare agreed to be given to any company, reasonable or otherwise, binds both companies as a question of assessment.

If they did not ignore it, and the court only made the agreement binding, upon the fact that the division of the entire fare was a reasonable one, then the question still remains open,—Would the court have come to that conclusion had the reverse been found? that is, had the arbitrator found that the toll of 1*d.* and 1½*d.* was in excess.

If the court should, were the matter again brought before them, come to the same conclusion, that the share of the entire fare, though found by the case to be in excess, was to be deemed binding, and should be first deducted, then why should it not equally be so, if too low? and if so, when too high and when too low, why not when nothing at all? The rent payable to the Reading, Guildford, and Reigate, *re* Dorking, was not taken absolutely, neither was the rent payable by the Great Western for its two branches; nor that by the Eastern Counties for Newmarket. Would not, then, those decisions at once clash with this? The only difference between this and those cases being, that rent, including numbers of passengers, and rates of passengers, will, if fixed, fix both; while toll per passenger, or share of the through fare, fixes only one. The conclusion, this being the

only difference, one can but come to is this,—that companies can agree between themselves as to their respective share of the through fares or rates per passenger; and that agreement is binding upon parishes for rating purposes; but, though they may agree as to the year's rent or toll they shall pay each other, that rent or toll, though agreed to, is not conclusive for purposes of assessment, because it includes both.

A. M. 1863. In the year 1863, the question of contributive value was again
Cannock Case. raised in the Cannock case, *London and North Western v. Overseers of Cannock* (a).

The Cannock Chase Line, is a short railway, 7½ miles, branching off from Rugely on the London and North Western. It is purely a coal line.

The line from its opening was worked and repaired by the London and North Western, who held it under lease at a yearly rental in perpetuity of £5500.

The case stated that the local working expenses were more than the local parochial receipts, and that therefore the line was worked at a local loss; but it also found that the line formed a link in the appellants' system of railways, which it was very desirable for the appellants to secure, from the traffic it would bring upon their other lines, and from the means it would offer of keeping out other companies from the district. Passengers, minerals, and goods were conveyed over the Cannock Branch, also over the trunk and other lines, at through rates and fares, the purely local traffic being comparatively *nil*. Consequently the Cannock Line contributed considerable additional traffic to the main line; *but the appellants were rated in respect of that in the different parishes where the profit upon it arose* (b).

The Cannock Line was worked as part of their general system.

The question for the opinion of the court was, the local expenses being greater than the local receipts, "should the line be rated at agricultural value 40s. per acre or upon something more, and if so, upon what principle?" to be referred to an arbitrator, to apply. The answer of the court was:—"It *has* a value above the 40s.;" but what that value is, and how it is to be arrived at, the court leaves to the arbitrator, who "is to ascertain what, taking all its advantages into consideration, is the (rateable) value of the branch line in the res-

(a) 9 Law Times, N. S. 325.

(b) This fact so found must not be lost sight of in considering the decision.

“pondents’ parish to the appellants.” The observations of the learned judges in the course of the arguments by counsel, indicate very clearly the train of thought that was passing in their minds, and show unmistakeably that they all felt there was a value belonging to the branch from the additional traffic it would secure to the main line, and that that value could not really have been lost because the branch line had been leased in perpetuity.

Mr. Justice Blackburn says, “what would be the elements of the rent, why, amongst others, the capacity to add to the takings of the main line.”

Chief Justice Cockburn says, “rent is *primâ facie* evidence of value—suppose, at this moment, there was no lease, and the appellants wanted to take it, what is the rent they would give? they would arrive at that by this process, what is the traffic on the branch? what are the expenses? what are the profits it would produce to the main line? with some other considerations.”

In other words, what shall we lose on the working of the branch? what shall we gain upon the main line, in working the traffic it will bring? and what rent can we afford to pay for the excess of the gain upon the main line over the loss upon the branch?

In the same year, 1863, another case came on for hearing before the court of Queen’s Bench, called the Amwell case, *Reg. v. The Eastern Counties Railway (a)*. Eastern Counties’ Amwell case, 1863.

It was a question affecting the goods receipts of a railway, what they were, and how they should be arrived at. To understand the question at issue, a few observations here may be useful. There are two classes of goods conveyed over a railway, one at carted fares, the other at non-carted fares. The first involve three sorts of services, the second but two. The fare charged in each case is a gross sum, not distinguishing between what is charged for each service. The three services included in the carted fares, are the transit, or conveyance from one place to another; the station, or terminals, in loading, packing, unpacking, shunting, distributing, &c., these are all done within the station; and carting the goods at either end, which is done outside the station.

(a) 4 Best & Smith, 58; 32 L. J. Rep. (N. S.) M. C. 174.

The non-carted fares consist of the first *two*. The second class of service only is correctly called terminals; the term unfortunately has been considered to include both, terminals properly so called, and cartage; and this appears to have been the meaning attached to it in the present case, no distinction having evidently been made then; the total goods and passenger charges over the parish are stated to be £6036, and the *terminals* (a) £2829; the terminals, properly so called, could not have amounted to that sum, though increased by the cartage outside, it probably did. There is nothing in the case to show that the court understood the sum to include the outside cartage, though, inferentially much, that they considered it represented inside services. As between the company and their customers, there being no need to distinguish the charge made for each class of services; the charge is made simply at so much per ton.

The above, however, only holds true as long as the traffic is confined to one line of railway, when it is all what may be called home or local traffic, for when companies forward goods as they do over each other's railways there are two other classes of traffic which have to be considered, "*foreign*," not "*home*," and "*through*," in which the subdivision of the entire fare becomes necessary. *Foreign* traffic is that, where goods received by one railway are consigned to a station of another railway adjoining, and *through* traffic is that where goods are conveyed over a third railway lying between the receiving and delivering railways, the traffic over the intermediate railway is called *through* traffic; the traffic over the receiving and delivering railway is called foreign traffic. In all traffic there are two terminals, one at each end. As regards any railway, local traffic includes two terminals; foreign traffic, but one, and through, none. It is clear, therefore, that as regards both foreign and through traffic, the gross fare must be divided. A company, called the Clearing House Association has been established for this and other purposes. As regards all foreign and through traffic, the foreign and through fares of all the railways, parties to the system, are forwarded to the Clearing House, who apportion the share belonging to each. As between two companies for goods, each company is entitled to one cartage terminal, each to a station terminal, and these are made a first charge upon the entire receipts, and the remainder, which represents the transit services, is divided between them, if not by arrangement, according

to distance ; and, as between three companies, the intervening company to whom the traffic is through, gets only its share of the remainder (after deducting the two sets of terminals) or of the through transit service charges.

In the case of all foreign and through traffic the value of the cartage and station services must be ascertained and agreed upon. It is not a question as between railways and their customers, but between railways themselves. Nothing is said in the case how the amount of £2829 is arrived at, and what the £6036 includes.

The £6,036 ought simply to have included the whole of the parish gross receipts for local traffic, excluding the cartage at both ends, the whole of the parish transit receipts for foreign traffic with one set of terminals, and the whole of the parish transit receipts for through traffic ; and the £2,829 should simply have included the two sets of station terminals for the local traffic, and one set of station terminals for the foreign traffic. No mention being made of the mode by which the £6,036 and the £2,829 are arrived at, it must be assumed that they correctly represent what they profess to be. These figures, taken in connection with the facts found in the case, viz., that the appellants are parties to the clearing house system, and that they have adopted the plan pursued by that system, and that the station of Ware, within the parish, is rated separately from the line of railway, will form the facts upon which the opinion of the court is required, the appellants contending that the £2,829 should be deducted, the respondents contending it should not. This was the real question, but there was a second one put, viz.:—"Whether the capacity "to earn the £2,829 was to be considered in determining the "rateable value of the stations." The court held that the amount of the terminals and the amount of expenses incurred in earning them, are parts of the general earnings and general expenses of the line, and are to be treated in the same way as any other part of the gross receipts and outgoings. This is an answer to the first question, and a most decided one too. The answer to the second is equally so ; they say the appellants contend that these allowances, which are called Terminals, are not part of the earnings of the line, but to be considered as earnings of the stations—"We, "however, are of opinion that we must, in conformity with the

“ established practice (*a*), treat the stations as only indirectly contributing to the profits of the line, and consequently as being to be “ rated as land and buildings, whose value is, to some extent, “ enhanced by their capacity of being employed in connection with “ the line.”

It is perfectly clear, from the above decision, that no deduction must be made from the two sets of station terminals in regard to local traffic, but no decision has evidently been given as regards cartage terminals. As between one company and another, in apportioning the through receipts the services rendered at the two ends would necessarily be taken into account. The entire receipts would of necessity include, as regards all carted rate goods, three classes of services, and the company discharging those services would expect a profit upon each. As long as the three classes are all performed by one company, the question of the number of services and the fair profit to be allowed upon each need not be gone into at all; but when two companies are concerned, then the nature and extent of the services rendered *must* be gone into, and the fair profit upon those

(*a*) The court is evidently referring to the decision laid down by the court of Queen's Bench in the Middlesex case (consisting of Lord Campbell, C. J., Erle, J., Hill, J., and Wightman, J.,) when the station, works, plant, engines, engine-houses, reservoirs, &c., are directed to be rated as mere land and buildings, with fixtures and machinery attached, and deriving some additional value from their capacity of being applied to such purposes as a water company, and when the judgment on another part also says, “ But the tenants of the lands indirectly earning no profit “ would not be liable to be rated in respect of any rent in the ordinary sense,” (which is profit, remaining after all deductions have been taken from the receipts.) But as these parts of the apparatus directly earning nothing, but indirectly conducing to such earnings elsewhere, are assumed to continue in operation, the company to whose interests such continued operation is essential, must be assumed to pay adequate remuneration to a contractor for land and fixed capital invested therein, together with the labour and skill requisite for the effective continuance of such operation; and these contractors with the company would stand in the relation of occupying tenants to the parish, and the part within the parish would be the rateable subject, and the local rateable value would be such sum as would pay the rent of the land and the profit on fixed capital thereon. 28 L. J. Rep. (N. S.) M. C. 135.

services, in both their nature and extent, must also be gone into. Otherwise, how can they be apportioned.

Take foreign traffic, for instance, between two railways, A. and B., A. having its goods station at London, and B. having all its stations in the country. The cartage services rendered in London by A. are more expensive to A. than the corresponding services in the country to B. Greater services represented by greater outlay require greater profit in proportion. Outlay, *plus* profit, equals the fare. The allowances, therefore, made between A. and B. will include both. The clearing house allowances necessarily include both.

Any railway A. is perfectly entitled to deduct the cartage terminal allowed by the clearing house as between themselves and another company, because they never receive it, and the hypothetical tenant would never receive it. But when they deduct at the same rate for the cartage terminals on their own local or home traffic, they are deducting not the outlay, which the tenant as well as themselves would have to incur, but the profit upon the outlay, which the tenant would receive as well as themselves, and which profit he would take into consideration in fixing the rent. Many companies in the half-yearly accounts issued to their shareholders, bring only into account the net goods receipts after deducting for cartage. Some companies bring instead the gross receipts, as well as the cartage cost, and carry out the net. In each case, however, this cartage, whether shown or not shown upon the accounts, is cartage paid, and in no case corresponding to the clearing house charge, which is cartage paid *plus* profit thereon.

The next case that came before the court of Queen's Bench was the *Haughley* case, *The Great Eastern Railway Company v. The Parish of Haughley (a)*, in 1866. Haughley case, in 1866.

Before going into this case, it will be desirable, in order to make the contention of the parish intelligible to the general reader, and to enable him to judge how far the decision of the court of Queen's Bench really bore upon the views contended for by the parish, to state what these views really were, how far these views were correctly stated in the case, to what extent they were affected by the findings, and how far the statement in the case really brought the views of the parish fairly before the court of Queen's Bench. And in considering these and the rulings of the court thereon, the reader

Contributive
value recog-
nized as a
principle.

(a) For statement of case, see p. 76.

is referred to the general observations that precede this brief history of railway rating.

First, in explanation, it must be mentioned that the term local traffic has been misunderstood and misapplied throughout.

The local traffic of Haughley station is, of course, the traffic that starts from, or ends at, Haughley station. The local traffic that passes over the parish of Haughley is the traffic that passes over the parish between any one and all of the stations on one side, and any one and all of the stations on the other that belong to the Great Eastern system. It is necessary that this should be clearly understood, because in the case the Haughley station traffic, which was very small, was termed *local*, and all the rest of the traffic was termed *through*, and by that arbitrary distinction not recognized at all in railway parlance. It appears, at first sight, and it is so stated, in some descriptions given of the case, that there was an attempt on the part of the parish, to increase their local earnings (improperly so called) by the profits made out of the through traffic. This local traffic might have been ignored altogether; might not, in fact, have existed at all; the existence of a station in the parish was a mere accident; and yet the condition of the parish would have been the same if there had been no station there.

Dorking case. In order to understand the real contention of the parish, and before we state specifically what it was, let us consider how the matter stood *before* the contention. The court of Queen's Bench had ruled, in the Dorking case (*a*), that there was a value over and above the *local* value; by the term local, is here meant the parochial earnings, less the local expenses and allowances, the parochial earnings being the aggregate mileage amount of fares and tolls that would belong to the parish, supposing that for every passenger and for every ton of goods conveyed over it the entire fare of the passenger, or the entire transit charge for the goods, had been equally divided per mile throughout the entire length of the respective distances carried. It may be mentioned here, and it will be more fully gone into hereafter, that the uniform mileage division of the entire fare, or toll, may be no more correct than would be a mileage division of the expenses. For the purposes of explanation, let it be assumed for the present that it is correct; but the court

(a) 3 El. & B. 491; 23 L. J. Rep. (N. S.) M. C. 84.

at the same time ruled that the rent agreed to be paid by the South Eastern, which was very much in excess of the net earnings of the branch upon which the parish of Dorking was situated, was not necessarily the rent, as various reasons might have induced the South Eastern to give a rent that the property really was not worth. Still the property was avowedly worth *more* than the net earnings of the branch would justify *per se*.

In the Cannock Chase case (*a*), which was evidently an attempt to Cannock case. induce the court to reverse their decision in the previous case, and in which it was stated that the Cannock line was worked at a loss, and in which the appellants contended that as the line yielded no profit, it ought only to be rated at its agricultural value, the court, consisting of Chief Justice Cockburn, Mr. Justice Blackburn, and Mr. Justice Wightman, confirmed fully the decision in the Dorking case. Chief Justice Cockburn giving the process that the tenant would necessarily adopt to get at the proper rent, viz. :—"He would," he said, "ascertain what the traffic on the branch was, and what the expenses." According to the case there would be a loss. This he would put on one side of the account. He would then ascertain the profits it would produce to the main line, that is, the traffic receipts it would bring, and the increased expenses occasioned by that traffic, and the excess of the former over the latter. These net profits he would put on the other side of the account. The excess of this gain over the loss upon the branch, would form the basis upon which he would arrive at the rent he would give.

What also does Mr. Justice Blackburn say—"What would be the elements of the rent? why, amongst others, the capacity to add to the takings of the main line," and Mr. Justice Wightman says—"the branch is worked at a loss; if it brings no profits to their main line, why do they keep it open?" The case was sent back to the arbitrator to ascertain what, taking all its advantages into consideration, is the rateable value of the branch line in the respondent's parish to the appellants. The law being thus settled, viz., that a branch, over and above its own profits, (if any) might have a value from the profits of the traffic it brought to the main line, the parish of Haughley attempted simply to carry out the process commended

(a) *Vide supra*, p. 64.

by Chief Justice Blackburn, and directed to be done by the arbitrator in the Cannock Chase case, viz., to find out how far the profits made on the main line would exceed the loss on the branch from the traffic that passed over both. Now, it is evident, that if a line of railway consists of main line and branch, and that if the branch is worked at a loss, the parochial receipts being calculated for all the traffic that passes over the main line and branch at a *mileage* division (*a*) throughout, and that if the traffic that the branch brings, produces a greater profit upon the main line than there has been loss incurred upon the branch, that, according to the law, as laid down in the two cases above mentioned, the branch would still have a value in spite of the loss; and it equally follows, that if the traffic receipts are apportioned to branch and main line, according to a mileage division, that the receipts upon the branch *plus* the receipts upon the main line, must together equal the whole receipts of the company, and, consequently, that if there *be* a value on the branch, that value can only be obtained out of the *receipts* upon the main line, or from allocating a lower scale of expenses to the branch, than, if worked by itself, it would incur. If so, then it follows, either that the mileage division of the receipts as now adopted is incorrect, or the mode of allocating the expenses, one or the other must follow.

If loss on branch is to be made up from profit on main line, the mileage division of receipts must be abandoned, or the station district expenses must be divided by a mileage too.

What the respondents in the Haughley case would have liked to have said was, the first is wrong, the receipts of the traffic passing over the parish should not be arrived at by a mileage division throughout; but as they had not sufficient means at their command to ascertain what the parish receipts should be, when divided according to the principle they would have contended for, they were forced to fall back upon the second, viz., that of the allocation of expenses. It must never be lost sight of, that the tenant would, as regards the whole railway, make, not the gross receipts the basis of his estimate of rent he could give, but the gross profits; and if he would do that with the whole, supposing he had to give a rent for different portions, belonging, say, to different persons, he would make the respective profits upon the several portions the basis of the rent. The respondents would do so too. They say the parochial receipts should not be started with, but the parochial earnings, or excess of receipts

(a) Not a mileage division from one end of the line to the other, but a mileage division of the station earnings.

over expenses. The parochial receipts are arrived at in this way; the yearly receipts taken between every station on the one side of the parish and every station on the other side of the parish are divided by the respective distances between the stations, and an equal mileage proportion given to the parish. This mode of subdivision applied throughout, would, of necessity, absorb all the receipts. The expenses incurred in earning those receipts are allocated, some according to train miles run, some according to receipts; but whether by one mode or the other, when so allocated over the whole, the whole expenses will have been absorbed. If, therefore, upon a branch, the allocated receipts are found to be only equal to or even less than the allocated expenses, and if that branch, from its bringing a large amount of traffic upon the main line has, as the courts have ruled it, may have a value over and above its own profits, from its connection with the main line, then it necessarily follows, that if the receipts, apportioned to the main line, are not to be reduced, the value must be obtained by reducing the allocated expenses upon the branch, and consequently increasing those on the main line.

The parish receipts are the aggregate mileage proportion of all the year's traffic that passes over the parish; this traffic is the aggregate of several single fares, from individual passengers, who are conveyed at different rates of expenses at different parts of the journey. The fare charged for him is one entire fare, the mileage expense of carrying him varies with the districts through which he passes. The company say, as regards the passenger, and therefore as regards all, or as regards the whole receipts, divide the fare equally per mile throughout, and then allocate the expenses, not according to what they really are, per passenger, in the several districts, but on another principle of allocation, train mileage or otherwise. The respondents say, and that was their intended contention before the court of Queen's Bench—ascertain first what are the different district expenses belonging to the passenger, and if to him, then to any number of passengers, chargeable against the entire, and then apportion the difference according to a mileage division. How far this contention of theirs was fairly and fully brought before the court in the decision given in the Haughley case, the reader must judge for himself. The respondents intended to lay down a general proposition, upon which they wanted the court's opinion. They said, or they would have

said, if they could have said what they would, we admit, as between a main line and a branch, it is not the rent actually agreed to be given for the branch, while the branch is independent, but what the branch should turn out to be worth afterwards, when it becomes a portion, part and parcel of the main line, and we go further, we say that if a branch contributes to the working of the main, so equally does the distant end of the main line to the other end, that there is no difference, contributively, between the one and the other; that if the distant non-paying end contributes to the profit upon the London end, so also does the London end reciprocate the benefit, and contribute to the other. And this being so, they, the respondents, say—this state of action and reaction throughout, and all the reciprocal advantages that result therefrom, are all provided for by the principle they contend for as the proper principle to be applied any where in arriving at the rateable value of any portion of a railway, they say—*Do not start with a mileage division of the full fare, but with a mileage division of the net profit of the full fare.*

It is somewhat curious that the analogous case, that of the four-horse stage-coach, which Chief Justice Cockburn refers to, is the very case the respondents rely on as confirmatory of their views: His Lordship says, "Take a stage-coach from Norwich to London: the expense of running it from Norwich to London was so much per mile, with little or no variation throughout the journey, sometimes it only carried five passengers, sometimes fifteen; if it carried five, it worked at a loss, and if it carried fifteen, it worked at a profit, and so it is with the railway." And so say the respondents, but they say more, they say this—stage-coaches are horsed for different stages by different persons. Take four stages of equal lengths, each stage horsed by different persons. In the first stage all the expenses of horsing the five persons are chargeable against them only, and there is no profit; when these five persons are carried with ten others on the fourth stage, and the expenses of horsing are divided between fifteen, these five passengers pay. Upon what is the entire fare of each of the five passengers calculated over the four stages? surely upon this, each will cost per mile in the first stage say a , in the second stage $\frac{a}{2}$, in the third stage $\frac{a}{3}$, in the fourth stage $\frac{a}{4}$, then, assuming the stages to be equal, say 10 miles, the expenses throughout, per passenger, will be $10a + \frac{10a}{2} + \frac{10a}{3} + \frac{10a}{4} = \frac{250a}{12}$.

This would be the basis of their estimate of what the fare should be; the profit, say, of $\frac{110a}{12}$ would be added, giving together $\frac{360a}{12}$ or $30a$, for the entire fare. The respondents, in effect, say,—his Lordship has not followed out the case, the question is not whether a loss is not incurred in the first stage, and a gain made in the last out of the same passengers, but whether, supposing the first stage to be in the hands of A., or supposing it to be unoccupied, would it not be worth while for the parties who had the last stage, to share the entire profits of the five passengers with A., or to horse them themselves at a loss through A. if they could carry them on to the first stage, and so divide the fixed expenses of horsing that stage between fifteen passengers instead of ten; and respondents contend that the parties who had the last stage, would either in giving a rent or undertaking to horse themselves, look at the whole fare, and the whole expense, and not at what the fare and the expense was in the first stage. And the respondents say, with his Lordship, that, as with the stage, so with the railway. The stages of coach travelling correspond with the station districts, as passengers are conveyed, per passenger, more cheaply in the one, so are they conveyed more cheaply in the other, according to the number of passengers among whom the fixed expenses and allowances are to be divided; but they in the case of railways go further than his Lordship, and say, the value of the first or distant traffic of a railway is not only what it clears within its own district, but upon the number of districts it passes through *afterwards* in its upward journey, and upon the number *before* in its downward journey, and upon the several rates of district profits to be obtained out of each passenger. The respondents agree with his Lordship upon the facts, but not with his inferences; they say, if it was thought the distant end would not pay, why make it? if it is found not to pay, why work it? and if it is made, and if it continues to be worked, then it is simply because experience has satisfied the company that the possession of the line brings them traffic, which, taking the year throughout and the expenses per passenger throughout, is worked at a profit.

In conclusion, it must be distinctly stated that in the opinion of the respondents, this contention on their part in the Haughley case, was strictly in conformity with the decisions in the Dorking and Cannock Chase cases; that there was no seeking to withdraw profits

legitimately earned in one parish to add them to another; but to show that the question for the imaginary tenant would in all cases be net profits of a traffic, not gross receipts; that as between one part of a railway and another, the proper principle of division would be net profits of a traffic, not gross receipts; and that as regards all traffic between station and station, the net profits, and not the gross receipts should be divisible among all the parishes over which that traffic passed, in proportion to the mileage.

The Great Eastern Railway Company, appellants, v. The Churchwardens and Overseers of the Parish of Haughley, respondents (a).

The case stated was as follows:—

Haughley
case, 1866.

“ The appellants are the Great Eastern Railway Company, their line runs through the parish of Haughley, in the county of Suffolk, with two branches, one leading to Bury, and the other leading to Norwich. There is a station in the parish of Haughley, and there are together 1 mile 6 chains of railway in the parish.

“ The gross yearly earnings on the railway in the parish of Haughley are £2,660. The principal traffic is that passing over the railway in Haughley from Bury, in the direction towards London, and back; and from Norwich, in the same direction, and back; and there is also considerable traffic passing over the railway from Bury to Norwich and back; the mere local traffic, namely, that originating or ending at Haughley, is very small.

In addition to the above, the arbitrator says:—

“ I also find the following deductions from the gross receipts to be properly made in ascertaining the rateable value: fund for renewal of way, £236; fund for depreciation of rolling stock, £76; risks and casualties, £20; interest and tenant's profits, 15 (*b*) per cent. on capital employed in the rolling stock and stores, £400. These sums, added together, amount to £732; and, supposing that the line in Haughley is properly rateable only in respect of the earnings of

(a) 35 L. J. (N. S.) M. C. 229. 1866.

(b) Mr. Worlledge, who heard the next appeal, found 12½ per cent. only.

“ Haughley, the figures in this and the preceding paragraph, give
 “ the rateable value of the line in Haughley about £388: in that
 “ case the blank left for rates and taxes would be filled up, £77.
 “ And I find the rateable value of the stations in Haughley would be
 “ £498. The above figures show the value of the occupation of the
 “ railway derived from the actual earnings in the parish of Haughley,
 “ and that portion of the expenses and deductions fairly applicable to
 “ the portion of the line in the parish of Haughley. The expenses
 “ and deductions depend to some extent upon the amount of traffic
 “ or earnings; as, for instance, the item for miscellaneous expenses,
 “ which is arrived at by dividing the whole amount of miscellaneous
 “ expenses in proportion to the earnings upon each part of the line.
 “ They also depend, to some extent, upon the distance run by the
 “ engines, and would be the same whether there was one carriage
 “ attached or several, and whether the carriages were empty or full.

“ And I have been desired to state, for the opinion of the court, the
 “ following question as to the occupation in Haughley being in-
 “ creased in value by a participation in some portion of the profits
 “ earned (a) on other parts of the line.

“ The respondents contend that there is an additional portion of the
 “ profits beyond those actually earned in Haughley properly attribut-
 “ able to the occupation in Haughley, and therefore to be taken into
 “ account in ascertaining the rateable value; they contend that, in
 “ respect to that portion of the traffic which passes not only over the line
 “ in Haughley, but also over other portions of the line, there should
 “ be a participation in all the profits earned, and therefore that,
 “ inasmuch as the same traffic is carried at a much greater profit over
 “ other portions of the line where the traffic is greater than over
 “ Haughley, each part of the line may be regarded as contributing to
 “ earn those additional profits. And the amount of contribution
 “ which the respondents insist upon is found by the mileage in
 “ Haughley, as they contend that, *in respect of the same traffic*
 “ *passing over any portions of the line, each mile over which it passes*

(a) Not earned in the opinion of the respondents, but alleged to be earned,
 and alleged wrongly.

“ must be considered as participating equally in the profits earned
 “ by that traffic, or in other words, as earning apportionate part of
 “ them. If they are right in so contending, as hereinbefore mentioned,
 “ for the participation according to mileage of all profits in respect of
 “ the same traffic, and if the fact that ‘ *the whole line is worked as one*
 “ *concern,*’ is sufficient to establish that proposition,—then I find as
 “ a fact (a) that independently of the profits derived from the actual
 “ profits in Haughley, there is a further profit, which upon the
 “ aforesaid mileage principle, would, to the extent of £75, be appli-
 “ cable to Haughley. If the respondents are not right in so con-
 “ tending, then I find as a fact (a) that there are no profits attributable
 “ to the occupation in Haughley beyond those derived from the
 “ actual earnings there.

“ The question for the opinion of the court is, at what sum the
 “ Great Eastern Railway Company ought to be rated in Haughley ?
 “ I reserve the question of costs until the decision of the question by
 “ the Court of Queen’s Bench.”

The case having been referred back to the arbitrator to raise any
 questions of law, that either party might think fit, Mr. Cleasby
 further certified and reported as follows :—

“ I have already raised upon the case the only question of law that
 “ I was, according to my understanding of what took place, called
 “ upon to raise. I was requested to raise, as a matter of law, the
 “ question of what was called ‘ contributive value,’ that is to say, of
 “ some additional value beyond the immediate value of the occupa-
 “ tion in Haughley, as well as other parts of the line, each mile of
 “ the railway over which that traffic passed must be regarded as con-
 “ tributing equally to the earnings of the profits derived from that
 “ traffic ; in other words, that if the same traffic is carried at a much
 “ greater profit over one part of the line than over another, still
 “ *each part of the line must be considered as equally earning the*
 “ *profit.* Being struck with the generality of this proposition, and
 “ the apparent difficulty of sustaining it, I took care to have it dis-

“tinctly understood that this part of the claim made by the respondents was founded entirely upon the correctness of that proposition, and that, if that proposition were not sustained, that part of the respondent’s claim failed. If that proposition be correct, there can be no other question of law, the figures arrived at being merely a result of the calculation of the profits. In obedience to the rule of court, and at the request of the parties, I make an addition to the case as follows :—

“I have been requested by the appellants to state upon what principle certain figures in the expenses and deductions have been arrived at. *The item for locomotive expenses, £468, has been arrived at by taking the locomotive expenses on the whole Great Eastern system, and then giving to Haughley the same proportion as the number of miles run by trains through Haughley bear to the number of train miles run over the whole system.* The item for carriages and waggons, £115, was arrived at in a similar manner, the difference being, that the number of carriages and waggons in each train must be taken into account. The item for miscellaneous expenses, £478, was agreed to on both sides, and was arrived at by taking the gross amount of miscellaneous expenses applicable to the whole system ; and then taking that proportion which the gross receipts in Haughley bore to the gross receipts over the whole line. Both parties agreed that this was the proper mode of apportioning these expenses. The gross traffic in Haughley, £2,660, is arrived at by taking that part of the receipts which arises from traffic not entirely local on the mileage principle ; for example, *if the whole fare of a passenger is a certain sum, a proportionate part of this sum is attributed to Haughley, according to the number of miles in Haughley*”

There was a second point raised, which needs no comment. It will be found stated in the judgment. It has reference simply to the means of arriving at the yearly fund to be set aside for the depreciation of tenant’s capital.

Chief Justice Cockburn, in his judgment, said :—

“Two questions have arisen in this case. First, whether in assessing Haughley for rating purposes, the traffic *beyond* it ought

" to be taken into account, in order that the expenditure within the
 " parish may be reduced; for the more we reduce the expenditure,
 " the greater is the profit of the line rated, and the greater, of course,
 " is its rateable value. After some attention to the case, it seems to
 " me that the decision of the arbitrator, Mr. Cleasby, was right.
 " There is a through traffic from London to Norwich, and, beyond
 " Haughley, on the road to London, there is a large accession to this
 " traffic. Now, it is said by Mr. Field, that the effect of this addi-
 " tional traffic is to reduce the expenditure with respect to each
 " individual traveller; so that, supposing him to have started from
 " Norwich, the expense of his carriage through the parish of Haughley
 " must be lessened by taking into account the diminished expense of
 " conveying him upon other parts of the line on the way to London.
 " But I do not think that the expenses of the line to be rated ought
 " to be calculated with reference to the cost of conveying passengers.
 " The working expenses of the whole of the traffic between Norwich
 " and London ought to be ascertained, and a proportionate part of
 " these expenses must then be apportioned to the traffic in Haughley (*a*).
 " The cost of carrying a passenger may vary upon different parts of
 " the line; but the working expenses may still be after an uniform
 " rate. This may be illustrated by the case of the old stage coaches.
 " The expense of running a stage-coach between Norwich and London
 " was so much per mile, with hardly any variation. Sometimes there
 " were five passengers, sometimes there were fifteen. If there were
 " five passengers, the coach ran at a loss; if there were fifteen,
 " the journey was a profitable one. So, also, with this railway, when
 " it is being worked from Norwich to Haughley, the profit is likely
 " to be less than when it is being worked along those parts of the
 " line beyond Haughley, where there is received a large addition to
 " the passengers and traffic, so that the rest of the journey is lucrative
 " and profitable. There is also this fallacy in Mr. Field's argument;
 " for, according to him, the working expenses of the line rated are to

(*a*) This is what the respondents say; but *how*? The whole parish pas-
 senger receipts are made up of the traffic between station and station; and
 this latter is made up of individual fares, which, passing through several
 station districts, comprise different rates of expenses.

“ be got at by taking into account the profits (*b*) of the additional traffic
 “ beyond Haughley, and not the mere working expenses of this traffic.
 “ These profits (*c*), whether by accident or not, are acquired without,
 “ and beyond the parish of Haughley ; and they cannot be rated as
 “ belonging to that parish. The first question must, therefore, I think,
 “ be decided in favour of the appellants.

“ The other question is, whether, in making deductions in respect
 “ of the repairs and renovation of the railway stock, the arbitrator
 “ was right in dealing with the case upon the supposition that the
 “ hypothetical tenant would make his calculations as to the amount
 “ of rent, under the assurance that the stock would be replaced at the
 “ end of what may be called its natural life ; or, whether these deduc-
 “ tions are to be made by finding the difference in the value of the
 “ stock at the beginning and end of the year of tenancy.
 “ Mr. Coleridge strongly urged upon us that we should be departing
 “ from the words of the statute if we held that the arbitrator was
 “ right in his view that the deductions in respect of repairs ought to
 “ be spread over the whole period of the natural life of the stock.
 “ But it is one thing to start with the assumption that you are dealing
 “ with a tenancy from year to year, and another to say that the cir-
 “ cumstances are such that the hypothetical tenant, in considering
 “ what rent he shall pay, is bound to assume that his tenancy will not
 “ last beyond a year. It is undoubtedly a tenancy from year to year ;
 “ but it is a tenancy of such a character that the tenant may well
 “ think it worth his while to deal with the rolling stock as though he
 “ were sure that his tenancy will not be broken up at the end of the
 “ year ; and if it were shown that in a large number of yearly tenan-
 “ cies the tenant does deal with his stock in this manner, this fact
 “ ought to be considered in valuing the rent payable under a yearly
 “ tenancy of this railway. At all events, the question, whether the
 “ tenant would make his deductions upon one principle or the other
 “ is a matter of fact which must be decided by an arbitrator or at

(*b*) A mistake. It takes the working expenses solely into account, and says, charge the gross expenses of the station traffic against the gross receipts of same, and then apportion the difference equally over the length of the traffic.

(*c*) Part of the profits, not the whole.

“ sessions, as the case may be. Now, I think, that there is nothing
“ in the Parochial Assessment Act which requires us to say how the
“ arbitrator ought to have decided upon a question of fact, and whether
“ he has decided rightly or wrongly. He must find out the circum-
“ stances which are likely to exercise an influence upon the person to
“ whom a railway is let from year to year, and how much rent he
“ might fairly be expected to give. When he has come to a conclu-
“ sion, it is not our province to disturb it, or even to pass an opinion
“ upon the reasoning which has guided him. This question must,
“ therefore, be decided in favour of the respondents.”

CHAPTER IV.

DEDUCTIONS, AND THEIR PRINCIPLES OF
ALLOCATION TO A PARISH.

Railway companies are landlords as well as tenants, and between themselves and their shareholders it matters not in which order the expenses are taken. As between themselves and the parish it matters materially. The valuation of a railway must be conducted on the footing of the valuation of any other property of a similar class, which is made for the purposes of assessment to the poor's rate. The gross rental must be ascertained first, to obtain which you must not deduct the landlord's outgoings, and the net rateable must be ascertained last. Only those items of expenditure which have to be incurred by the imaginary tenant, together with the usual tenant's allowances, are proper deductions in the first instance. It will be found that in the case of railways, as well as in other classes of property, there are some expenses one scarcely knows whether to assign to the landlord or to the tenant—these all belong to reparation. If the particular item of expenditure in the company's disbursements includes both tenants' repairs and landlord's maintenance, not landlord's renewal, (for under the word maintenance both must be included; the words used in the 6 & 7 Will. 4, c. 96, being, "also the probable average annual cost of the repairs necessary to *maintain* the property in a state to command such rent); the tenant's repairs must be "deducted."

They bear as small a proportion to the landlord's expenses of repairs and renewals, as do those of a yearly tenant of a house

to those belonging to the landlord. What are the probable items of a tenant's expenditure, examining the rails, lifting and packing the sleepers, tightening keys, &c. These must be allowed, certainly, if great accuracy is required; but it would come to a very small percentage of what the landlord's expenditure would be (a).

When, however, it is sought to make this a pretext to charge all the landlord's repairs to the tenant, and limit the landlord's statutable to a sinking fund for renewals, so as to make the difference between the gross and net, the mere sinking fund to replace, or what it would be called with house property, to rebuild (b), then the fact must be ascertained, and the company's own item of maintenance must be divided into tenant's repairs, landlord's repairs, and landlord's renewals, (all of which subdivisions, the one item in the accounts, after a few years' opening of the line, necessarily consists of) in order to allow the first to the tenant, as one of his out-goings, and to show whether the landlord's repairs are above or below the average, and whether the yearly sinking fund for renewal has been overdrawn upon or otherwise.

To adopt any other plan than this, would be to set the Parochial Assessment Act at defiance, and to afford to companies, by the comparatively slight difference in percentage that would then exist, a pretext for stating that the difference of percentage for statutables between the gross and net of house

(a) Of the 15*l.* difference, generally made between the gross and net of a house letting at a yearly rent of 100*l.*, including repairs, insurance, &c. necessary to maintain the property, one per cent. would be enough for that.

(b) It is open to any one to put his own construction upon the wording of the clauses of any Act, and to commend his views as strongly as he pleases to others, but it is not open to omit or alter a word in order to give a greater colouring to those views.

property is considerably in excess of that of railway property.

“ We are (*not*) of opinion that in the case of railways, it is best to consider gross estimated rental as the rent which a tenant would pay who has annually to repair and maintain the way, but not to provide for its ultimate renewal (*a*). ”

SECTION I.

MAINTENANCE OF WAY, WORKS AND STATIONS.

The first item of deduction in the order in which they are found generally in the companies' accounts is maintenance of way, works and stations, that is, maintenance and insurance of the subject, the *corpus* as it is called, and so much of this item as has reference to what are really tenants' ordinary repairs or expenses of working should be allowed here, and the remainder brought forward afterwards under “ *statutables*. ”

In apportioning this item of mere tenant's repairs, when correctly arrived at for the whole system, to the particular parish, two modes will probably be contended for, one by train miles, another by length miles; another, perhaps, by receipts; without expressing any opinion, it will be sufficient to quote the words of Mr. S. Laing, the great railway financier, in his letter to the shareholders of the Brighton Company (respecting the amalgamation with the South-Eastern Railway

(*a*) Neither the tenant nor the company has to maintain annually and to renew ultimately—the whole railway will never at once be ultimately renewed—it was constructed by lengths, it is being renewed yearly by lengths, and charged in the maintenance, and therefore to put by a yearly sinking fund, and to draw upon it also in the year's maintenance, is simply to have it allowed twice over.

Company). “Train miles, or in other words the work done, and “not the money received, regulates four-fifths of the expenditure on a railway. A passenger costs you just the same, “whether, as on the South Coast Line, you get 2*d.* a mile from “him, or, as on the South Eastern, you get 2½*d.*”

SECTION II.

LOCOMOTIVE EXPENSES, REPAIRS AND RENEWALS.

The next item of the company's expenditure is *locomotive expenses*, that is, the monies spent during the year upon the locomotive stock, in running it and in maintaining it. Companies and parishes join issue as to this item also; *first*, what it includes; *secondly*, how it is to be allocated. As to the *first*, both parties are agreed that it includes all the working expenses, and repairing expenses; but parishes, in addition, say it includes renewals as well, and they contend in consequence, that when afterwards the company ask for the tenant a sum for alleged depreciation of stock, they ask for what has already been allowed in the company's item of expenditure, and that if he is to be allowed the item among the tenant's allowances, then this the second item of expenditure must be divided, and only so much of it as has reference to working the engines and doing ordinary repairs to them, must be allowed here. Issue is always joined upon this matter, as it is one, among others, that materially affects the rateable value.

As to the *second*, or how the sum properly arrived at for the whole system is to be allocated to the parish, issue also is generally joined.

The questions that naturally arise for consideration in determining the proper mode of allocation are these—given the total of the expenses incurred over the whole system as a fact connected with the particular railway under consideration, how is

that amount to be dealt with? This total has been incurred in running so many train miles, or it has been incurred in carrying so many passengers, or in earning so many receipts: there have been so many train miles run per mile (or so many trains) over the particular parish, there have been so many passengers carried, and the earnings derived from them per mile have been so much—will you apportion the total in proportion to the train miles run, or to the passengers carried, or to the receipts taken? Some companies so keep their accounts, which they issue to their shareholders, that the shareholder can judge whether, when compared with the receipts of the previous half year, there has been diminution of percentage in the expenses. Some companies so keep them, that the shareholders can judge whether there has been any diminution when compared with the train miles run? Either principle will answer the purpose for which it is intended, but they can scarcely both be correct as a principle of allocation for parochial assessment. Companies sometimes contend for one, sometimes for another; there are short trains and there are long trains, there are trains that are all but full, and there are trains that are all but empty, there are passenger trains and there are goods trains, and therefore much may be said on both sides, as there are facts that appear to favour the one principle, and facts to favour the other. Again, there are engine miles, and engine train miles, &c., &c.; and there are passengers who pay 1*d.*, the larger number generally by far, others who pay 1½*d.*, a few who pay 2½*d.*; there are long heavy trains filled with the first, there are short express trains occupied by the last, and there are average trains well or partially filled, as the case may be, with all three. Different quarter sessions, occasionally, come to different conclusions. It is scarcely a question of law.

SECTION III.

CARRIAGE AND WAGGON REPAIRS AND RENEWALS.

This item, like that of locomotive expenses, must be considered in two different aspects,—First, as a whole, what upon the whole system the expenditure includes, whether, besides ordinary repairs, it includes renewals, and such renewals that virtually maintain the stock in such a state as would command for the tenant going out at the end of the year the same amount as he would have had to have paid on going in; and, in the next place, how the whole is to be allocated to the parish. Companies and parishes do with this item the same as with the previous one, contend for that principle in each case which suits them best, sometimes for one principle, sometimes for another, but seldom both for the same; the question is, which of the two principles is right? Is either right? It must be admitted at once, as regards this item, that, given the same number of trains over two parishes, the expenses would vary directly with the number of carriages; consequently, if the number of carriages mileage run over the whole system could be ascertained, and the number of carriages mileage per mile over the parish, the total expense of this item should be allocated in proportion to carriage mileage. Companies contend, however, that the trouble of getting out the information would be too great “*le jeu ne vaudrait pas la chandelle.*” So they set up another principle, they take the train miles in the parish, they average, somewhat roughly, the carriages to a train, and in that way they approximate to the carriage mileage in the parish, then, instead of taking out the entire carriage mileage over the whole system, and dividing the entire expense by this mileage to ascertain what it actually does cost them per mile, they assume $\frac{1}{17}$ per mile, and multiply the rough average parish carriage mileage by that.

The question for the sessions is, which of these three approximations is the most correct, viz., allocating the carriage and waggon repairs in proportion to receipts; or to train miles; or approximating to carriage miles in the parish, and applying an arbitrary sum of $\frac{1}{4}d.$ per mile; the only really correct principle of allocation, that per carriage mileage, not being available, from the trouble and expense involved in getting out the necessary data.

SECTION IV.

TRAFFIC AND MISCELLANEOUS EXPENSES.

The next item or items of expenditure are those which are sometimes included under the head of miscellaneous expenses, sometimes they are called traffic and general charges, and are kept distinct, sometimes coaching and station general charges, but whatever names different companies have given to them in their respective accounts, there are really three distinct classes of items comprehended under this one head of miscellaneous expenses, viz : 1. Expenses incurred for transit services over and above what may have been already charged for in the two previous items. 2. Expenses incurred at the stations and those at the general office in the management of the traffic; and, 3rdly, Expenses incurred as a joint stock company upon such services, as would not be necessary, were there no shareholders or debenture holders to divide the money among, after it had been received.

The first two classes of expenditure would be equally incurred by the hypothetical tenant as by the company, the last would not; the first two would therefore have to be allowed over the whole system, provided in any one year they did not include any exceptionally heavy charges, such as for compensation arising from accident, which should in that case be struck out,

and the item introduced afterwards (a). In allocating these items to the parish, the first of the two is so decidedly dependent upon the length run, being purely for transit services, that if the accounts of the company admit, which they do not all do, of the item being distinguished from that of the second class, this item ought to be allocated according to train miles, and the second class being principally for station services, for porters, ticket collectors, station masters, gas at stations, &c. having really nothing to do with the miles run, should be allocated according to receipts.

SECTION V.

THE GOVERNMENT DUTY.

This is an item imposed under the statute 5 & 6 Vict. c. 79, upon all passenger receipts, except the third class and parliamentary, Act 7 & 8 Vict. c. 85, s. 9, which should, of course, be allowed. Parishes can only approximate to the amount, as the government duty over the whole system only is accessible to them. It is usual for this item to be allocated per gross receipts, or if the parishes obtain from the companies the passenger receipts taken within the parish, then per passenger receipts, but even this latter principle of receipts is not correct, as a larger proportion of that passenger traffic may pay government duty than of the entire passenger traffic. The companies can ascertain what this item should be exactly.

(a) Compensation should be introduced as a special item. It should be taken on an average of years, and when so taken should be allowed, whether there had been any accident or not during the year. There are various sorts of claims for compensation; it is intended that all should be deducted and averaged, those under Lord Campbell's Act for loss of life or limb as well as those for loss or damage of goods, bad gold, bad debts, and any other losses to which railway companies are liable.

SECTION VI.

TITHE RENTCHARGES.

This, of course, must be allowed, the company can tell what it comes to within the parish exactly, as they must have had the whole of the land taken by the railway re-apportioned.

SECTION VII.

RATES AND TAXES.

All these are proper deductions, and must be admitted; no question, therefore, arises upon this item as a whole (*a*), but in allocating them to the particular parish, it must be remembered that rates and taxes are mostly local, and vary very much in particular parishes, so that in making a valuation of a railway in any parish, the rates and taxes over the whole system should not be allocated like the other items of expenditure, but should be omitted altogether, and the item itself should not be gone into until the last, when a result is arrived at representing the rateable value mixed up with the rates.

It frequently happens in an union that between one station and another, where there is, of course, no disturbing element, and where every mile would have the same rateable value, were the rates in the £ the same throughout, that, owing to the difference of rates, adjoining parishes would really differ materially in rateable value. Hence, whenever assessment committees have fixed the assessment of the whole railway in the union at the same amount per mile throughout, those parishes which paid higher rates in the £, would have had fair ground of complaint, and could have appealed with success under the Union Assessment Committee Act.

(*a*) *Vide* page 40, note (*a*) on tenant's income tax.

The above comprise the tenant's working expenses, which, deducted from the parochial receipts, leaves an amount representing the net profits of working, after providing for the maintenance of the tenant's stock.

SECTION VIII.

TENANT'S PROFITS UPON HIS STOCK.

The amount representing net profits (*a*) is the basis of the tenant's estimate of rent that he can give, it is also the basis of the estimate of the landlord, as to the rent he would be willing to receive; there are of course two parties to a contract, and the oscillation between supply and demand will of necessity end in equilibrium, the tenant wants to take and occupy advantageously as much as the landlord wants to let; the tenant will not take without a fair profit upon the capital he has to bring into the concern, nor will the landlord let without a fair profit upon his. What does the tenant do for this? He gives his whole time and skill to the superintendence. If he did not give his own time, but employed a bailiff, the farm would still command the same rent, but he would only get probably his 6 or 10 per cent.; he would have his bailiff to pay, and the outlay in other respects would be heavier. (Read what the late Mr. Pashley, the Assistant Judge of Middlesex Sessions, says),—

“ So, in the great business of farming throughout the country, make the farmer a proper allowance for his personal skill and labour, and there remains to him, for the use of his capital, after payments of all his working expenses, and of

(*a*) The profits of any business is the measure of its value, not the gross receipts.

" his rent, probably less than six per cent. Any improvement
 " which should substantially increase this amount of tenant's
 " profits on his capital would inevitably lead to an increase in
 " the sum paid by him as rent. I am acquainted with one case
 " of a farm, let a few years ago at £400 a year, which the owner
 " has taken into his own hands, and has occupied with a tenant's
 " capital of £3,000; the farm has been improved, and would
 " now let at £450 a year; under a very vigilant and active
 " management the farm now produces, after allowing for the
 " whole skill and labour employed, £600 a year as a return for
 " all the capital employed in the occupation, that is, £450 a
 " a year (at which sum the farm would certainly let) for the
 " landlord's capital invested in the land, and £150, or five per
 " cent. only, for the tenant's capital invested in the occupation."
 And he says elsewhere,

" The current price of the stock in a railway is, I think, an
 " exact measure of the expected return of (a).
 " No evidence was given respecting the proper amount of
 " profits to be allowed in respect of the capital needed for such
 " an occupation. The learned counsel on both sides stated that
 " they left that amount, without either evidence or argument
 " on the subject to my decision. I have considered the matter
 " fully, and have had occasion to do so on many former occa-
 " sions, and I think it right to state the ground of my decision.
 " The occupier has already obtained a specific allowance
 " in the ascertainment of his net receipts, of *all outgoings*
 " *needed to provide for every risk, actual or calculable that*
 " *could be named, and to provide for the proper remuneration*
 " *of all skill and labour of directors, superintendents, and*
 " *other representatives of the supposed tenant.* What I have
 " to allow, therefore, is simply the proper rate of tenant's
 " profits, in respect of the employment of his capital. And the

(a) Probably *interest upon cost.*

“question is, for what per centage of expected dividend would capital be offered at the present time for employment in the business of occupier of this line of railway?”

So again with shopkeeping. Mr. Pashley says “a retail country shopkeeper gets as much as 40 or 50 per cent. on a great part of his wares. The answer, as old as the work of Adam Smith, is, that such 40 or 50 per cent., wherever it is found, means a difference of 40 or 50 per cent. between whole-sale and retail price, and that the shop, rent, and shopkeeper’s skill and labour are all provided for out of the difference in price in question.”

In ascertaining the percentage of tenant’s profits, it is frequently assumed that the tenant has not the money, and, therefore must borrow it, and pay interest for the same, but there is no real reason for this assumption. This tenant is hypothetical, why should not those persons who are assumed to be the lenders, be considered as the tenants, why should *they* be deemed to be satisfied with 4 or 5 per cent. upon such security as the tenant can give them, when the tenant is to be entitled, according to the company, to 10 or 15 per cent., when the security is the net revenues of the company.

The security of the the tenant, which he can give to the person of whom he borrows the money, can only be derived indirectly from the company’s security to himself. Why should one be satisfied with 4 or 5 per cent. interest on an indirect security, when the other is to have 10 or 15 per cent. on a direct security? And especially it must be recollected that every expense, actual and contingent, is allowed in the accounts. Directors and management are all allowed and paid for, compensation for risks and casualties, losses by trade, bad debts, the reparation and replacement of the tenant’s stock are all provided for, so that all the skill and labour (*a*) which a

(*a*) Make the deductions for skill and labour, and, a shopkeeper capitalist, in a country town, gets for his mere capital but little more than the ordinary

tenant gives to the management of a concern, and which may entitle him to some 20 or 25 per cent., are already included in the accounts, and are allowed for.

The question, therefore, really left to the quarter sessions is, not what profits a farmer is entitled to upon the farming stock he brings to the farm; not what profit a small country shopkeeper would require, who, devoting his whole time to the business, and giving his own skill, would expect out of the profit, sufficient to pay his house rent and to keep himself and family; not what a skilled mechanic would expect as profit upon his capital, who would work himself and direct the working of two or three others; and not even what a capitalist would expect, who bringing in a large capital, would, in any business, superintend and direct the labours of many subordinates (though the percentage for profits would in this last case be much lower than in the former); but what profits any one is entitled to upon his capital merely? That the rates of profits must vary reversely with the extent of the business is evident, when it is considered that the work done in *all* businesses consists of the superintendence or skilled direction of the principal, and the work done by those under him. The wages paid to the latter is the principal part of the required capital of a manufacturer. The charges he makes for the work done includes his profits upon the capital or wages, and also his own payment for skilled superintendence, the latter may be considered a fixed or constant quantity (varying with the skill of the individual, but not varying in the case of the same party with the number of men in his employ), the former varying with the numbers employed, consequently as the payment for the skilled labour is not diminished in proportion to the wages capital, the fewer the workmen, or the smaller the business, the greater must be the proportion of the skilled labour to the wages capital, and

profits of stock. It is his skill and labour that constitutes all the difference between wholesale and retail prices,

consequently, a higher percentage measured upon the wages capital must obtain for the two. Hence the smaller the business, the greater the tenant's profits upon the capital; and the larger the capital, the smaller in proportion the allowance for skilled labour, as compared with the wages capital, and, consequently, the smaller the percentage of profits upon the capital; in fact, increase the wages capital indefinitely, without increasing the skilled labour (that is, the skilled labour of the principal, the skilled labour of all the subordinates being included in the wages capital), and you reduce the profits upon the wages capital to a *minimum*; to something above, but really inappreciably above the interest upon capital without skilled labour. What does Mr. Pashley say upon this subject?

“ The subject of the proper amount of tenants' profits to be
 “ allowed as the return for capital employed, mainly in the
 “ business of a carrier on a line of railway, does not fall properly within the range of legal knowledge. But since both
 “ parties in these appeals have expressed a wish that I should
 “ deal with the question on my own personal views respecting
 “ it, I shall, therefore, do so. The question is one purely of
 “ fact, and he who is to decide it should understand something
 “ of what has been written respecting capital and labour, profit,
 “ and rent, from the time of Adam Smith to that of Mill; and
 “ still more, he should know what is the ordinary profits of
 “ stock, as now obtained by its employment in the various
 “ forms of industry now exercised in this country, and, most of
 “ all, what is, in fact, at present prices, the ordinary profit of
 “ stock now invested in railways.

“ Although all calculable risks have been calculated and
 “ allowed for, including risk of injuries to buildings, risk of bad
 “ debts, &c., &c., yet there are undoubtedly some risks incident
 “ to the carrying on of the business of a railway company which
 “ cannot be calculated. The risk of European war, or that of
 “ a bad harvest, or of great commercial depression, even with-

“ out war, must have some effect on the estimated value of the
 “ occupation of a railway company. All these risks have some
 “ effect also, even on the three per cents., and the risk of a bad
 “ harvest is a much more serious matter for capital invested in
 “ farming throughout the country, than it is for any other
 “ forms of investment. Probably the return of profits on rail-
 “ way property is exposed, in respect of risks, which cannot be
 “ calculated, to less risk by far than that of waterworks’ com-
 “ panies, or dock companies.

“ Capital invested in the business of a railway company is,
 “ probably, at least, as safe as that in dock companies, canal
 “ companies, waterworks companies, gas companies, and joint-
 “ stock banking companies. If the price current of capital
 “ stock of such companies be referred to, it will be found to
 “ range at the present prices of the capital stock, and with the
 “ present dividends of such companies, at from 5 to 6 per cent.
 “ The average of such returns is nearer to five per cent. than
 “ six. *Now railway property is liable to less fluctuation than*
 “ *some of the other properties* referred to. We should, there-
 “ fore, expect, perhaps, to find the average return for stock
 “ invested in railways at the now current price of such stock
 “ receiving a return of not more than five per cent. And such
 “ is the fact. In this very line (a) on which the return of
 “ profit in the last two years, to all holders of its stock, has
 “ been rather less than five per cent., the present price of the
 “ stock is a little above par. The capital now invested in the
 “ line is so invested on the expectation of a return of less than
 “ five per cent. It may justly be said that to some extent in-
 “ vestment takes place which is meant to be permanent, and
 “ under the hope of a future increase in the returns. This is
 “ so; but this is a small element, and it will be found on exa-

(a) North London Railway.

“mination, that in any given state of the money market, and at
 “a given price of the funds, the amount of dividend of a rail-
 “way company has long been, and is, the main and substantial
 “consideration. Any increase in the weekly returns of traffic
 “on any any given line, at once exercises an influence on the
 “price current of the shares. It is necessarily to the trade
 “carried on that the capitalist looks when he invests his
 “money. Let us see how many years’ purchase of the present
 “dividend of a railway company does a capitalist give in order
 “to become a railway proprietor.

“An expectation of future increase in the value of a line of
 “railway may have some influence in drawing capital into the
 “concern. Although any change in the weekly returns of
 “traffic of a line very soon affects the price of shares, and
 “shows that the capitalist is well aware that he is investing
 “in a trade, and that his returns depend on such trade, yet,
 “it must be owned that the expectation of permanent stability
 “and even improvement in the value of railway property, may,
 “in many instances, have contributed to bring into English
 “railways the £500,000,000 of capital now invested in them.
 “To some extent, therefore, the current price of railway stock
 “will, upon the average, be higher than it would be if the
 “present amount of dividend alone were looked at in pur-
 “chasing such stock. I think, therefore, that the present
 “tenant’s profit should exceed the five per cent. on the expec-
 “tation of which money is now invested in the ordinary stock
 “of railways.”

And, in conclusion, he measures this excess and says,
 “upon the whole I am quite satisfied that 6 per cent.
 “as the tenant’s profits on the capital employed by him is all
 “that can be allowed.” It was a question at that time for Mr.
 Pashley, before whom the North London St. Pancras case (a)

had been heard, by consent of both parties, who proffered no evidence of the subject, to say what per centage of tenants' profits (including interest) should be allowed, and from the elaborate written judgment which he prepared, but which his untimely death prevented his delivering, there is little doubt about his having most carefully weighed and considered the subject (a). It will in every case be a question for the particular quarter sessions before whom the appeal is being heard. There was another elaborate decision given by the late recorder of Leeds, T. F. Ellis, Esq., in the matter of an appeal by the Midland Railway Company against the overseers of Armley, which bears fully upon this point (b). Mr. Ellis says, in the course of his judgment, " the next item I will consider together
 " with the item which is next but one to it in the estimate of
 " the appellants. They say, that the value of the money which
 " a supposed tenant of the line *would have to invest in loco-*
 " *motive stock is £49,149* ; and such a tenant, they think, would,
 " in estimating the rent which he is to pay, expect to be
 " allowed—First, 5 per cent. interest on this sum, and then
 " 15 per cent. for tenants' or trade profits. Secondly, they say
 " that, if 5 per cent. is allowed for interest, no more than 10
 " per cent. ought in addition to be allowed for profits. As to
 " this, I cannot doubt, that the allowance which they propose
 " is extremely liberal. A very short consideration of the prin-
 " ciples upon which such deductions are allowed will, I think,
 " show this.

" The subject of the rate is the value of the occupation.
 " When we ask, what is the rateable value of any subject of
 " occupation, we ask, in effect, what is it worth while to give
 " for the permission to occupy ? This is what the legislature
 " meant in proposing, as a test of rateable value, what a tenant

(a) Mr. Pashley died in 1859.

(b) Hodgson's Summary of Rating, p. 94.

“ would pay as rack-rent. The tenant pays for the permission
 “ to apply his capital and labour to the subject of occupation
 “ and take the resulting profits. But, in applying this test, we
 “ must exclude any consideration of the greater or less ease in
 “ obtaining the capital required. The question is not, whether
 “ a tenant can easily be found? The tenant is introduced
 “ merely as a hypothetical test of the value of the right to
 “ occupy. We must, therefore, take it as if we had tenants
 “ *ready with unlimited capital*, or (which, in practice, is the
 “ same thing), *as if there were a large joint stock company*
 “ *intending to invest their money in the speculation.*”

“ Now, the considerations which determine (independently
 “ of local and accidental disturbing causes, which of course
 “ are not now to be taken into account) the rent which a tenant
 “ would pay for the right to occupy, are—can he employ his
 “ money at better interest? Can he employ his labour at better
 “ profit? In other words, can he, by employing the same
 “ money and labour, and at the same risk, get more return
 “ than, by giving the rent which is asked for, he will get here?
 “ The answer will be determined by the average value of
 “ capital and labour in the country, including the consideration
 “ for risk.

“ It does not much signify, therefore, whether we first allow
 “ interest for the money and then allow for the value of the
 “ labour and risk, or put the two together, and call them trade
 “ or tenants' profits. But it is clear that what the appellants
 “ in effect assert is, that money applied to the hire of this
 “ railway ought to produce 20 per cent. profit; and that the
 “ respondents are content to allow 15 per cent.

“ *It is to be observed here, that the risk is very little. There*
 “ *is no specific charge made for insurance; but the insurance*
 “ *of the buildings must have been taken into account in the*
 “ *estimate of the rateable value of the buildings; and the risk*
 “ *upon the rest must, from the nature of the property, be very*

“ *slight ; less certainly, very much, than in the case of standing crops, ships, cotton, goods, &c.*

“ Then, as to the labour, *that has been already allowed for.*

“ The previous items include what, in the case of a farm, would correspond to the farmer’s personal exertions in the tillage ; in the case of a ship, to the superintending the details connected with the navigation ; in the case of a shop, to the trouble of providing the goods, regulating the business, superintending the clerks, and so on. That which in agriculture or trade takes up most of a man’s time, is here done for the supposed tenant.

“ In the consols, the interest now attainable is between $3\frac{1}{2}$ and 4 per cent. (a). How much more labour and risk would a party incur by embarking his money in the hire of this railroad, all expenses being paid ? The trouble of taking the money from the clerks would be somewhat more ; the risk of destruction is rather greater ; and something must be allowed for the less facility of shifting capital, once so embarked, to any new investment. But when all these allowances are made, the 15 per cent. *which the respondents propose to allow, seems to me far to exceed what would be suggested by comparison with other investments.* The 5 per cent. must therefore be struck off, only the £540 11s. 4d. allowed.”

SECTION IX.

TENANTS’ CAPITAL.

Before disposing of this item of profits it must be mentioned that the amount of capital that the tenant would require, and upon which the percentage of profit could be calculated, is a

(a) The consols were at that time fluctuating between 84 and 85. They are now at 93.

vexed question. It is, like the items of expenditure, composed of subordinate points of difference.

First, as to the capital required over the whole system—companies and parishes differ about this—they also differ as to how properly to apportion the whole to the parishes. First, as to the whole, what it includes. The companies, before the North Staffordshire case (*a*), in spite of the Southampton case (*b*), contended that almost everything but buildings, line, rails, chairs and sleepers had to be taken by the tenant, and they still contend that he has to take the fixed machinery in the workshops. The parishes consider that the tenant has to take to nothing but the moveable plant, tools, furniture and stores (*c*).

And the two, not content with differing as to what items the capital should include, differ about the items. And unfortunately, the figures which represent them are so large, that it becomes important to show which are right; take the last item, “stores,” for instance; railway companies are landlords as well as tenants, and they are obliged to have on hand large stores in both capacities—they have to maintain the line, the buildings, the rails, the sleepers, the chairs, &c., and doing this as landlords, the parishes say they the tenants would not be called upon to take to them; moreover, they differ, companies and parishes, as to the amounts to be adopted for each item, in arriving at the tenants’ capital.

The court of Queen’s Bench in the case of *Reg. v. Great Western Railway Company* (*d*), held that the sessions need not go years back to get at what each item actually did cost, but they were to take the value; unfortunately companies and parishes do not

(*a*) 30 L. J. (N. S.) M. C. 68.

(*b*) 20 L. J. (N. S.) M. C. 155.

(*c*) A recent decision in Essex, *Reg. v. Overseers of Halstead*, seems to have thrown some doubt upon the matter. Justice of the Peace, June 15, 1867, page 373.

(*d*) 6 Q. B. 179; 15 L. J. (N. S.) M. C. 80.

agree about this. Value admits of a wide difference of opinion. The company ask for a yearly depreciation or for a fund to renew and rebuild when worn out, and this amount the parishes say, is charged and allowed in the company's accounts, and they contend that as this renewal is not all done yearly, but some fraction of the whole done one year, another the year before, another the year before that, that the whole plant now in use is in various stages of depreciation, of which the centre of the series is the mean. The higher the rate the companies fix this yearly depreciation at, the more they must diminish at any one time the value of the stock, and if they wish to keep up the value of the stock, the lower they must fix the yearly depreciation at. Companies wilfully shut their eyes to the horns of the dilemma, and try to do both—adopt a high rate of yearly depreciation, and at the same time endeavour to increase the value. And upon this as much as any other item the contending parties join issue.

Sometimes the companies' witnesses, from the general experience, they allege they have already had in other cases assume that the amount of capital a tenant requires is about equal to the gross receipts; and they produce certain railway accounts, which, showing the half-year's receipts, and the amount spent in moveable plant, appear to corroborate this view. It must be understood, however, that the amount in the account is not the *value* of the stock in use. It is the *cost* of all the plant that has been brought upon the line and charged to capital account since the opening. It may or may not represent the stock in use. Some of the stock may have been worn out, and, if replaced with new, and charged to capital, still the cost of the old wornout stock would remain, would not be written off. But it may be that only the excess of the cost of the new would be charged to capital. In the latter case, the amount of the moveable plant in the capital account would, but in the former case, would not, correctly represent the cost of the stock in use.

When the fair *cost* of the stock, such as similar stock would cost at the time of the rate, taken at an average, (not what it did cost, for, having been purchased at various periods, the prices might have varied considerably,) has been ascertained, then the value to *sell* has to be ascertained; and herein arises a fresh difficulty. Is it to be, to sell to a tenant who would remove it elsewhere, or to a tenant who would succeed in the occupation? Is it to be considered as sold under a forced sale, or under a valuation as between one party willing to sell and another to take, the purchaser becoming the incoming tenant? and under any one of these conditions, given the ages and fair cost of the stock, how is the present value of the whole to be ascertained?

Having settled, by no means an easy matter, what the tenant's capital, over the whole system, ought to be, the next question is, as usual, how is it to be allocated?

Is it to be in proportion to receipts? Is it to be according to train miles, or how otherwise?

Companies, at times, not only say that the entire receipts are about equal to the entire tenants' capital; but they go further, and say, that given the mileage receipts in a parish, the tenants' capital due to them are about equal to them. They do not, however, say so on a branch or non-paying line. Parishes do not assent to this; *they* say, that the capital required depends upon the work done. They contend that the work done is by no means in the same ratio as the receipts earned; that some miles produce very large gross receipts, with comparatively little work done; and that other miles require a greater amount of work to be done (*i. e.* train miles run) to earn but trivial receipts; and they contend that if the imaginary tenant were called upon to apportion his entire stock for use along the entire line, he would apportion it according to the trains run, and not according to the monies earned. There are conditions under which he might require nearly as much stock to work a bad paying

branch as a good main line; as in the one case the trains which would have to run all through might be all but empty, and in the other all but full; and in running a train on the main line, not intersected by a branch, the trains at the non-traffic end would have to be made up large enough to accommodate the traffic at the good traffic end. The fares received for the people inside would not increase the work done, at least, only so far as those fares necessitated an increase in the number of carriages; and to this extent only the allocation of the entire tenants' capital per train mile would not be strictly correct. The true principle of allocation lies somewhere between the two, —between that of train mileage and that of receipts. Subdivide the tenants' capital into passenger and goods engines, and passenger and goods carriages and waggons, and allocate the former per passenger and goods engine miles respectively, and the latter by passenger and goods carriage and waggon mileage, as in the case of the carriage and waggon expenses, and you have a principle of allocation which could safely be admitted by both parties.

The amount of tenants' capital properly due to the parish, and the proper percentage of interest and tenants' profits upon that capital having been applied to it and deducted from the previous balance, the remainder represents the gross rental, mixed up with the rates and taxes payable by the tenant, and to be calculated upon the net rateable involved, of what is due for the line in the parish, and for the stations throughout.

SECTION X.

The next item to be deducted is that of Statutables for *maintenance of way, works, and station*, forming the largest portion of the first item usually in the company's accounts (a).

(a) Vide section 1, page 85.

SECTION XI.

The next item of deduction is that which may be called the Station Assessment Contributive Fund. The parochial receipts, including as they do, and, according to the decision, as they are bound to do, all station terminal charges, must, of necessity, include a portion belonging to the stations, which, of course, have to be rated to the parishes where they are situated; this portion, whatever it may be, must be deducted, and the balance will represent the net or rateable value of the line, together with the local rates payable upon the line, and the parish share of the average rates throughout payable upon the station assessment contributive fund. It is usual to allow 4 or 5 per cent. upon the receipts in the parish to get at the contributive fund due from the parish. If this fund is not considered to include the average rates and taxes mixed up with the net rateable value, then the average per-centage of rates and taxes over the whole system ought to be deducted also. A question arises here, and the point was raised in the case of the *Queen v. North Staffordshire* (a), but never satisfactorily answered,—are the actual station assessments over the whole system to be provided for by the contributive fund to be obtained from every parish, or is an estimate to be made of what the assessment should be, and the fund to be considered to be raised to meet that? Hitherto, both parties, appellants and respondents, have acquiesced in the uncertain position of the law, that the last decision has left the matter in; but more stations, and larger ones, are being frequently built; and as each station is now being valued on a higher scale than they used to be, the question is becoming every year a more important one, and will require to be re-heard. The question was, “whether

(a) 30 L. J. (N. S.) M. C. 68.

“the deduction to be allowed in respect of the stations, buildings and sidings, should have been ascertained by taking the rateable value, *at which the same were assessed to the relief of the poor*, or by allowing 6 per cent. upon the original cost of construction, as contended for by the appellants, or how otherwise a deduction should be made in respect of the said stations, buildings, and sidings.” And the answer was, “As regards the fourth question, we are of opinion the deduction to be allowed in respect of station, buildings, and sidings, must be calculated on the actual value at which they *ought to be* assessed, and not upon the original cost of construction.”

This is only an answer to the two modes suggested.

Is the amount at which they are actually assessed to be rated?

No. Is the amount to be calculated upon the actual cost?

No. It is no answer to the 3rd question put, “If neither of these two modes, how otherwise?” “*The deduction must be upon the actual value at which they ought to be assessed,*” the court says; but it does not state upon what *principle* they ought to be assessed.

This station contributive fund being deducted, will leave the net rateable value of the line mixed up with the local rates.

The simplest mode of ascertaining what these rates are is, to say, as twenty shillings *plus* the rates upon 20s. is to the rates upon 20s., so is the net rateable in the parish *plus* the rates, to the rates upon the net rateable. These rates, thus ascertained, being deducted, will leave the net rateable required.

CHAPTER V.

ASSESSMENT OF GASWORKS, (AS A WHOLE.)

The principle adopted in ascertaining the net rateable value of gasworks is necessarily the same as that of railways. The gross receipts include the whole subject matter of the rate, and have to be reduced by the usual deductions, as in the case of railways. These deductions may or may not be subjects of dispute according to what they are stated to include, but they are of necessity of the same nature as those of railways, and are to be treated in a similar way.

The following estimate, made to ascertain the rateable value of the entire property of the Cambridge Gas Company, which extends through several parishes, will furnish a good illustration of the mode in which the rateable value of similar properties is usually worked out.

CAMBRIDGE GASWORKS.

Estimate of the net Rateable Value of the Cambridge Gasworks.

	Thousand.
5,000 tons of coal, producing 9,500 feet of gas per ton	47,500
Deduct for leakage and home consumption 18 per cent.	8,550
Number of thousand feet of gas disposed of	- - 38,950
For which the gross rental realized is, say	- - £10,433

Brought forward - - £10,433 0 0

Deduct Expenses.

	£	s.	d.	£	s.	d.
				Per Ton.		
Cost of coal per ton -				0	16	0
Less residual products disposed of, viz. :						
Coke - - - -	0	7	0			
Breeze - - - -	0	0	3			
Tar and ammoniacal liquor - - - }	0	0	6			
				0	7	9
Net cost of coal -	0	8	3	For the whole concern.		
				£2,063	0	0
Lime, say - - -	-	-	-	100	0	0
Bad debts - - -	-	-	-	100	0	0
Tradesmen's bills - - -	-	-	-	1,637	0	0
Wages - - - -	-	-	-	1,227	0	0
Salaries - - - -	-	-	-	563	0	0
Repairs - - - -	-	-	-	249	0	0
Mains - - - -	-	-	-	147	0	0
				£6,086	0	0

Gross receipt - £10,433 0 0

Expenses - 6,086 0 0

Net earnings £4,347 0 0

	£	s.	d.	£	s.	d.
Net earnings	-	-	-	£4,347	0	0
<i>Tenants' Capital</i> , say £4,000						
20 per cent. upon £4,000-	-	£800	0 0			
Renewals and reproduction	-	250	0 0			
				£1,050	0	0
				£3,297	0	0
Less rates and taxes 4s. in the £	-	-	-	550	0	0
Net rateable	-	-	-	£2,747	0	0

In the case of gasworks, as in that of railways, the several deductions and allowances are constantly in dispute, more particularly the allowances.

NOTE.—It must be understood that this is a parish estimate made under unfavourable circumstances, and in the absence of the requisite data of actual receipts and actual expenses, which the company could have supplied; and that, consequently both the items and the prices are debateable. So that this example can only serve as an example generally of the mode in which these cases are treated. In fact, in gas estimates, each case stands more particularly upon its own merits, and must be treated more carefully, according to its own peculiar circumstances, than in railway estimates.

Moreover, the business itself of a gas company is never stationary, and the property which is the subject matter of the rate is constantly increasing; the extension, however, not being such as to warrant at all times an increase of capital, and being met by disbursements charged against the revenue account. Now the difficulty of separating between reparation and enlargement, especially in the absence of the actual items of expenditure, is very great, at the same time that some approximate separation becomes all important to the parishes.

CHAPTER VI.

ASSESSMENT OF WATERWORKS,

(AS A WHOLE.)

The following estimate of the rateable value of the station works, mains, and pipes belonging to the West Middlesex Waterworks Company lying within the parish of Hampton-on-Thames, made in the year 1856,* will serve as an example of the way in which these estimates are framed. In principle they differ little from the estimates of gasworks and railways. In case of gas companies, coal is manufactured into gas at the station works; in that of water companies, impure water, by subsidence and filtration, is converted into pure; and in both cases, when the manufactured article is complete, that article is conveyed by the mains and pipes from a place where it has little or no value to a place where it has, the mains and pipes being virtually a hollow railway or canal over which the article not wanted in one place is conveyed to another where it is. Wherein, then, does the transit through the mains and pipes differ from that over the railway or along the canal?

In the case of railways or canals, goods are conveyed from the places where they are not wanted to be, to places where they are, and passengers also by means of the railways are conveyed from places where they have no value, so to speak, to where they have, and in such case, whether of goods or passengers, the service rendered is measured by the transit charges, which in their turn are the measures of the beneficial occupation of the land over which both goods and passengers are conveyed; and surely the mains and pipes of gas and waterworks should be placed under the same category as the rails of a railway.

* The author was professionally engaged in this case.

WEST MIDDLESEX WATERWORKS.

Estimate of the rateable value of the Mains and Pipes lying within the Parish of Hampton.

Gross receipts for the year ending the 30th
September, 1855 - - - - £70,889 5 5

Deduct.

Directors', auditors', officers'			
salaries, collectors' poundage,			
office charges - - -	£6,426	16	1
Coals, workmen's wages, engine			
house charges, street charges,			
and other expenses - - -	9,157	19	5
Rent, rates, and taxes - - -	0	0	0
Law, &c. - - - - -	0	0	0
	£15,584	15	6

Deductions and Allowances.

1. Depreciation of pipes, mains,
and works, say - - - 1,000 0 0

Tenant's Capital.

Total amount of expenditure
for the year, say £24,000
 $\frac{1}{2}$ thereof - - - £12,000
Stores - - - - £2,000

£14,000

5 per cent. interest upon			
£14,000 - - - - -	700	0	0
10 per cent. tenant's profits -	1,400	0	0

Total expenses and allowances - £18,684 15 6

£52,204 10 0

Then taking the rates at 4s. in the £ - - £8,700 0 0

Total rateable value - - - £43,504 10 0

CHAPTER VII.

GAS AND WATER COMPANIES.

Subdivision among Parishes.

As the court of Queen's Bench has in every respect placed these companies in the same category—now giving a decision affecting one—now affecting the other, but in every case equally applicable to both, the cases will be given as they were decided, whether they be gas or water. The first important case was that of *Rex v. The Amwell New River Company (a)*. Where the question was, whether Chadwell Mead, in which was the spring which supplied the New River, should be rated by the parish of Amwell at £5 or £300? The sessions had found that if the value of the spring to the New River Company was to be taken into consideration, the amount of the rate should be £300; if not, and if the value of the bare land only was to be taken, then the amount should be £5.

The court of Queen's Bench held that the value of the spring *was* to be taken into account, and therefore gave judgment in favour of the £300.

I have inserted this case, not that it has been supposed to have had anything to do with the subdivisions of the rateable values of the properties of Gas and Water Companies among the several parishes in which the properties are situated, but because it is the case constantly referred to when any question of contributive value is started—by the one side, as the decision laid down years and years ago, that there could be, and in the case of Amwell, there was, a value over and above the local value, and by the other side, as simply enunciating that as the sessions had found the spring itself was of a certain value there within the mead, that value was to be added to that of the mead without it.

Mr. Justice Wightman in the judgment given in the West Mid-

(a) 1 M. & S. 503.

dlesex case (a) in 1859, curiously enough refers to Lord Ellenborough's decision in the New River case, and says—"This case has been supposed to sanction the notion that the parish of Amwell was entitled to rate land in Amwell by reference to profits made in Islington or elsewhere. Probably the parish officers and sessions may have included a reference to those profits in the amount, but the court entirely ignores any such reference, and takes the question to be, whether the rate is to be on the two acres of mere land according to the value of the land of that kind in Amwell, or with reference to its value in the occupation of the company, with the power of using it for their purposes, and with capital laid out on it making it fit for those purposes." Lord Ellenborough confines his judgment expressly to the local value in Amwell, for he says, "*The water has a certain ascertained local value at the fountain head;*"—if it has, it is rateable for that value irrespective of profits which may be derived elsewhere from distribution through pipes.

It is clear, from his Lordship having referred to and dwelt so long on this case, that different inferences had been drawn from the decision of Lord Ellenborough in 1838, and that the court of Queen's Bench in 1859, was desirous of correcting whatever erroneous notions that appeared to prevail upon the subject.

Whether conclusively or not, I must leave the reader to judge, for from what quarter any value can be obtained for the spring, except from the profits *which are made elsewhere*, it would be very difficult to say, so that after all, perhaps the question really at issue in the Amwell case, is a matter of apportionment between several parishes,—given the rateable value of the New River Company's property as a whole, what share of that whole belongs to Amwell? and if the profits in Islington are the local takings, less the local expenses, then these profits must be charged with a proportion for Amwell, otherwise, as what would be true of Islington, would be true also of Pentonville and everywhere else, there would be no sum from which the increased local value of Amwell could be made up. In truth, what is the principle of directly and indirectly productive values and the mode of apportioning the whole value between them, but that of

(a) 28 L. J. Rep. (N. S.) M. C. 135.

charging the profits upon the productive portions with a contributive amount for the unproductive.

The local value of the Amwell spring would be *nil* were it not for the profits which are derived from it everywhere, and which profits everywhere are reducible *pro ratâ*, to make up "*the ascertained local value at the Amwell fountain head.*"

The next case of note was that of *The Queen v. Cambridge Gas Company* (a), which was decided in the year 1838. In this case there Cambridge Gas case, 1838. were several questions raised, which ought not to have been raised then, and are not likely to be raised again—the *first*, whether the sessions finding, as a fact, that the whole of the property would let to a responsible tenant for £2,400, the principle contended for by the Company of showing a rateable value of £230 could be correct? The court of course said *No*.

The *second*. The court being in favour of starting with the rent the premises would let for, was—were the company not entitled to statutable? Yes, of course.

The *third* was,—whether *from* the rent actually found a sum of £600 for the profits in trade of the Company was to be deducted to get at the rent. The answer was of course, *No*.

The *fourth* question was,—whether the Company were entitled to deduct from what was found in the case to be actual rent of the whole, the annual value of the mains and apparatus within certain colleges which are not rated to the relief of the poor? The court said Yes.

The whole property, including the portion required for the colleges, is found in the case worth so much. Under ordinary circumstances, the whole would be chargeable with rates, but that portion of the whole which belongs to the colleges being not rateable, rates can only be imposed upon the remainder, and as the rates would be chargeable upon the amount in the rate-book, that amount ought to be the remainder and not the whole.

The *next* and *last* question was,—after deducting for the mains and pipes in the college portion, and for the station works in the parish where situated, upon what principle ought the remainder to be dis-

(a) 8 Ad. and E. 73, and S. C. 7 L. J. Rep. (N. S.) M. C. 50.

tributed among the parishes through which the mains and pipes are laid?

Before giving the answer it may be as well to consider a few facts connected with the question. The station works are in one parish, from which run large dead mains through some parishes, and subordinate mains through other parishes, gas being consumed in some of the former, but in all of the latter.

The sessions were disposed to ignore the mains and pipes throughout, which would have exempted the dead mains from being rateable at all, and have shut out the parishes which had only dead mains in them from any portion of the rateable value of the whole, though the only means by which the gas could be taken from the works to the place of consumption was by means of pipes passing through the parish; and to distribute the remainder "*in proportion to the receipts for gas supplied in each parish.*"

The court on the contrary, and at variance with their later decisions in the West Middlesex and Sheffield cases ignored the receipts, and ruled not only that the sessions were wrong, but that the distribution should be "*in proportion to the quantity of apparatus situate in each parish.*"

Mile End Old
Town case,
1847.

In the year 1847, came the Mile End Old Town case (a). The question raised here was simply a question of apportionment. It was true that the Company endeavoured to get the court to rule that the capital of the tenant should be calculated on the receipts; but the arbitrator, to whom the case was referred, having found that the tenant's profits bore no definite proportion to the receipts, the court of Queen's Bench seems to have confined themselves to deciding upon the real question, that of apportionment.

The difference between this and the Cambridge gas is in reference to this question, and as to the findings.

The arbitrator in this case, for the first time, divides the whole property into the *indirectly* and the *directly* contributive portions, and among the indirectly contributive now classes the dead mains, while in the Cambridge case, these dead mains were classed with the receipts, and therefore were dealt with as directly contributive.

This difference of classification, small as it may appear at first sight, is most important, for it has enabled the court to so far modify

(a) 10 Q. B. 208; and 16 L. J. Rep. (N. S.) M. C. 184.

their judgment given in the Cambridge case, as without reversal of their ruling in that case, to do justice to all the parishes, in which the property is situated.

The Cambridge case, placing the mains among the directly productive portions would, if the remainder had been made divisible in proportion to receipts, have left out entirely the parishes in which no receipts were taken. This would have been so manifestly unjust that the court were bound to distribute the remainder by quantity of apparatus, irrespective of receipts, making thereby the receipts vary with the apparatus (which no arbitrator could ever find as a fact, no more than any arbitrator could find as a fact that, as between several parishes and the gas rental received within them, a tenant could be found to pay rent to the parishes in proportion to the apparatus, and not in proportion to the rental.) But the Mile End Old Town case having transferred the mains to the indirectly productive portion, parishes having only dead mains, as well as parishes having station works, could obtain some portion of the rateable whole, and the remaining parishes taking receipts could then be better placed under one category, viz., that of direct productiveness, furnishing receipts by way of gas rental to the tenant, for which he would be willing to pay rent to each of the several parishes in proportion to the gas rental he derived within it; and having found that whether the subdivision of the directly productive portion was made in the ratio of the net profits or of the gross receipts, or of the quantity of mains and pipes, the result would be the same, the court were enabled to uphold their previous decision at the time; and to substitute in the future the ratio of receipts universally true as a mode of subdivision for the quantity of apparatus only occasionally so (*a*). The court

(*a*) In the case of *The Chelsea Waterworks Company v. The Overseers of Putney*,* argued before the court of Queen's Bench in 1860, the respondents had ascertained the rateable value of the whole, then deducted the value of the indirect portion, and afterwards apportioned the value that was left in proportion to the apparatus and land in the several parishes. The court held,—the findings of the arbitrator may have misled them,—that this method, which is laid down in the Cambridge and Mile End Old Town cases was incorrect.

* 27 L. J. Rep. (N. S.) M. C. 236.

in their judgment say—"That of the three methods that should be selected which would best show the rent to be expected in that part, if the work situate in the district were let separately," and afterwards, in conclusion, "an apportionment according to the gross receipts in each district would be according to the rent to be expected from the part of this rateable subject situate in such district."

Lord Denman continues—"This apportionment is not at variance with the grounds of the judgment in *Regina v. The Cambridge Gas Light Company*. There the court decided that the parishes in which the profits are received are not entitled to all the amount produced by the rate, but that the parishes in which parts of the apparatus indirectly conducing to produce profit are situate are entitled to a proportion. The court also declared that the principle upon which the sum of rateable value from the rates of all the parishes should be apportioned, is the same as that which has been applied to canals. By the method adopted in this case, the rateability of the portion of the apparatus indirectly conducing to produce profit is provided for, and the residue of the sum of rateable value is apportioned to those parts of the apparatus directly producing profit, in analogy to the mileage proportion for canals and railways. We have thus endeavoured to show, that the rule for ascertaining the value for separate rating ought to be applied as far as practicable to apportioning among separate districts a sum of rateable value arising partly in each."

West Middlesex case, 1855.

The next case of importance was decided in 1855, eight years after. It was an appeal by the West Middlesex against a rate made in the parish of Hampton (a). Several of the water companies of London, who obtained their water from the Thames, being compelled by Act of parliament to obtain it above the rise of the tide, three companies, The West Middlesex, the Grand Junction, and the Southwark and Vauxhall built large pumping stations at Hampton-on-Thames (which is above Teddington Lock) and laid down through Hampton and Richmond and other parishes adjoining, 36-inch dead mains from the works to the metropolis.

(a) *Reg. v. West Middlesex*, 28 L. J. Rep. (N. S.) M. C. 135, and 1 Ellis and Elli., 716.

These mains were generally laid in the high road.

The first contention of the companies with the parishes through which these mains passed was, that being in the high roads, they were not rateable at all. And this was the first point raised in the case. The court of Queen's Bench at once ruled that they were rateable. The mains being rateable, the next point was how were they to be rated. The parish contended that the water consumed and paid for in the metropolis, having to pass through this main, the main was analogous to the thick end of the railway telescope or to the trunk of a large tree, through which trunk only the sap could get to the branches, and that consequently the sectional area of the trunk would exceed the sectional area of all the branches anywhere; or, which the parish contended, was the same thing, that the sectional area of the main at Hampton was equal to all the sectional area of all the subordinate mains and pipes anywhere, and therefore that the value within the parish was, as regards the whole value, in proportion as the length in the parish was to the entire length of the main from Hampton to the metropolis. The Company, on the contrary, contended that if rateable at all, the dead mains were only rateable as indirectly productive, to be classed and dealt with as the station works. The court held that the Company were right, and in conformity with their previous decision in the Mile End Old Town case, they ruled that after having ascertained the rateable value of the whole property, that whole was to be subdivided into two portions, one directly contributing to earn the receipts, the value of which would depend upon the amount of gas or water rental; the other, indirectly contributing, that is, the station works, including reservoirs, filter-beds, retort-houses, gas-holders &c. And in this portion they classed the (dead) mains, which, not being tapped, but conveying the gas or the water from the place where the gas is made or the water obtained, to the place where either the one or the other is consumed, only indirectly contributed, they said, to earn the receipts.

In the year 1863, the *Reg v. Sheffield United Gas Company* (a) was decided.

(a) 32 L. J. Rep. (N. S.) M. C. 169; 4 B. & S. 135.

Sheffield Gas
Case, 1866.

This appeal was against a poor rate made on the 11th November, 1839, for the township of Sheffield, and heard before the quarter sessions on the 2nd of April, 1860, when a case was agreed upon by consent of both parties.

The station works are in the township, and large mains pass through the township to supply gas to parishes beyond. Gas is also largely consumed in the township.

The parish arrived at the net rateable value of the whole property by taking the gross receipts, deducting the working expenses, and making the usual allowances as would be done for the valuation of a railway. They then ascertained the structural value of the company's manufacturing works, and allowed upon it the usual contractor's net rent or interest upon the outlay. They subtracted this net rent from the net rent of the whole, and the remainder they apportioned among the several parishes consuming gas in the proportion of the value of the mains and pipes lying within them.

The appellants on their side contended that the manufacturing works should have been valued like any other buildings of a similar extent in the town of Sheffield, and the usual deductions made from similar buildings in the town should be applied to them. Secondly, that as to mains and pipes, these should have been divided into mains and pipes laid in localities where they were necessarily laid, and those where they might have laid them elsewhere if deemed expedient; and should have valued them only for the land, and at such a rental as land, which in the latter they might have used instead of what they did, was actually being let for, putting a higher value upon the land they were forced to take, as being under the necessity of paying at somewhat higher rental for that land because they could not do without it.

The points referred to the court were thus stated—

“ If the court of Queen's Bench should be of opinion that the method above applied by the respondents, of fixing the net annual value of the appellants' rateable property in the respondent township is not according to the Parochial Assessment Act, and is contrary to law, then the court is prayed respectfully so to declare.

“ If the court shall be of opinion that the appellants' method is

“ correct and ought to have been applied, then the court is respectfully
 “ prayed so to declare.

“ If the court of Queen’s Bench shall be of opinion that neither of
 “ the methods above stated is correct according to law, then the court
 “ is prayed to declare what is the right method according to law, by
 “ which the net annual value of the appellants’ rateable property in
 “ the respondent township should be ascertained.”

Mr. Justice Blackburn delivered judgment. The court held “ that
 “ the respondents were right in their mode of arriving at the rateable
 “ value of the whole, provided the proper allowance had been made
 “ for expenses and tenant’s profits and interest upon capital.

“ And they were also right if they had adopted the principle of
 “ valuing the station works and buildings as laid down in the Mile
 “ End Old Town case, and that of the West Middlesex, and not the
 “ appellants, who the court understood contended for a different
 “ principle.

“ On the remaining point, the subdivision of the directly produc-
 “ tive value (arising from the gas rental not required for the indirect
 “ interests) in proportion to the values of the mains and pipes in the
 “ several parishes was not correct, not being in conformity with the
 “ principles explained in the judgment of the court in *Reg. v. West*
 “ *Middlesex Waterworks Company*.”

In the year 1866, the next case, that of *Reg. v. Inhabitants of Phoenix Gas*
Lee (a) came on before the court of Queen’s Bench at the January Case, 1866.
 sittings before Lord Chief Justice Cockburn and Justices Blackburn
 and Lush.

The appeal had been heard at the January sessions of 1865, before
 Mr. Gathorne Hardy, M.P., at Maidstone.

The decision given in the Sheffield gas case, pointedly confirming
 the decisions in the Mile End Old Town and the West Middlesex

cases seem to have settled the principles upon which the whole property should be valued, and also how it should be apportioned.

Lord Chief Justice Bovill, then counsel for the company, remarked in his opening speech, that he felt "*that after the decisions announced by the court of Queen's Bench, he could hardly succeed in inducing the court to adopt the principle of structural value as had been originally contended for on the part of companies, he could not ask the sessions to set aside the views expressed by the judges of the land.*"

Admitting, or rather acting upon the principles laid down in the cases, the company claimed higher allowances for the tenant. An attempt had been made on several occasions in seeking to arrive at the tenant's profits, to calculate the percentage allowed him, not upon the money he would have to bring into the concern, but upon the gross receipts; but these attempts had failed. One arbitrator in the case had reported that the company had sought to do so, but he had not been able to find any connection between the capital of the tenant and his receipts. Confined therefore to the tenant's capital, the company in this case sought to increase it, it was the only way in which any large diminution of rateable value could be secured.

The company, with this object in view, after deducting the working expenses from the gross receipts, which leaves the net profits of the concern to be divided between the landlord and tenant, claim as the necessary capital for the tenant to bring into the concern, the following, viz. :—

Working Capital -	-	-	-	-	-	-	£50,000
Present value of Meters	-	-	-	-	-	-	35,000
Present value of Retorts	-	-	-	-	-	-	18,000
Present value of fixtures and utensils	-	-	-	-	-	-	97,000
							£200,000

making together £200,000, the tenant's capital, which the respondents allowed, being £37,000.

The company contended, and gave evidence to that effect, and in the 18th paragraph of the case it was "found as a fact by the court of Quarter Sessions, that according to the practice and course of

“business in letting and hiring gas works, the tenant would have to take to and find capital for all the property comprised under the heads of meters, retorts, tenants’ fixtures and utensils, and would have to provide £150,000 for that purpose, (and that a deduction in respect of such outlay was to be made in estimating, according to the provisions of the Parochial Assessment Act, what rent a tenant from year to year would be willing or might be reasonably expected to pay”) (a).

The parish allowed only the first item in the tenant’s capital, viz., working capital, which they said should be £37,000, not £50,000. The sessions allowed the £50,000, and the remainder, in all £200,000, but granted a case for the court of Queen’s Bench.

The questions for the opinion of the court of Queen’s Bench were—

“1. *Whether it was competent for the court of Quarter Sessions to allow a deduction by way of tenant’s profits in respect of any, and if any, of which of the matters and things comprised under the head of meters, retorts, tenant’s trade fixtures and utensils, the nature of which is above more particularly described? If the court of Queen’s Bench shall be of opinion that in any of the above-mentioned cases it was not competent for the court of Quarter Sessions to allow a deduction, they shall not allow a deduction accordingly.*”

The court held in reference to the meters, retorts and tenant’s trade fixtures, upon which the company claimed a deduction by way of tenant’s profits that *no deduction was to be allowed except in respect of the meters.*

It must be borne in mind, that this decision of the court of Queen’s Bench is based upon the facts found in the case, and that one of the facts so found (b) is, that according to the practice and course of business in letting and hiring gas works, the tenant would have to take to and find capital for (c) all the property comprised under the heads of meters, retorts, tenant’s fixtures and utensils.

(a) This is not a fact, it is a principle.

(b) See the 18th finding above quoted.

(c) With respect to this fact so found, the reader’s attention is called to the author’s General Observations, beginning at page 35, and especially to the first paragraph at page 36, *Facts so found*, &c. &c.

CHAPTER VIII.

BRICK FIELDS; CEMETERIES; COAL MINES;
QUARRIES, &c.

I have placed these properties in the same category because they have a common peculiarity, which is not the case with railway, gas, and water companies, viz:—that the very subject matter of the rate, the property itself is constantly being used up, and some day will become exhausted. And a separate chapter has been devoted to them, because, according to the notion of their owners, this peculiarity removes them from the class of public companies, and calls for another principle of valuation. The mode of dealing with this peculiarity has been several times brought forward as a question for the Court of Queen's Bench.

As to Brick Fields,—*Re the case of the Queen v. Westbrook*, and of *The Queen v. Everest* (a).

As to Cemeteries:—in the *Queen v. St. Mary Abbot's, Kensington* (b), and *Queen v. St. Giles, Camberwell* (c).

And as to Coal Mines:—in the case of *The Queen v. Attwood and others* (d), and in that of *The Queen v. Lord Granville* (e).

In all these the Court held, as regards this peculiarity, that the *corpus*, the subject matter of the rate, not being renewable by any setting aside of a yearly sinking fund, so as to enable

(a) 10 Q. B. 178, and 16 L. J. Rep. (M. S.) M. C. 87.

(b) 12 A. & E. 824.

(c) 14 Q. B. 571, and 19 L. J. Rep. (N. S.) M. C. 122.

(d) 6 B. & C. 277.

(e) 9 B. & C. 189.

the property always to command that rent, no sinking fund should be allowed; remarking, that when the brick earth was exhausted, there would be nothing to rate, and when the land of the cemetery was full, the cemetery would no longer be rateable as such. There were other points raised at different times for the consideration of the court; these will be found mentioned under the special subjects to which they refer.

SECTION I.

ASSESSMENT OF BRICK FIELDS.

Much uncertainty seems even now to prevail, as to how brick fields are to be assessed.

This principally arises from the fact of the terms under which brick land is held being different from those under which the imaginary tenant is usually supposed to hold.

There seems to be a notion that brick fields should be classed with farms, and not with companies, whose values are measured by the profits of the immediate year preceding. There is an attempt to apply the *in communibus annis*, which may be very well with a farm whose produce will always command a market, but certainly not so at all times with a brick field; bricks cannot always command a sale:—that this is the case is evident from the peculiar nature of the terms under which the leases are held. In one case the surface land is paid for at so much per year per acre, and the brick earth only when dug, and at so much per thousand of bricks made, the lessee being bound to make not less than so many thousands of bricks during his occupation, or he may be bound to make not *less* than so many thousands yearly,—but as many more as he pleases, paying a royalty upon the whole made if above the average,—if not, upon the average. In another case, the tenant pays so much per acre,

of surface land, with the option, during the lease, of digging brick earth at a fixed sum, if desired, and digging to any extent. Sometimes, the tenant, paying a certain surface rent, may dig up acre by acre, at so much per acre, irrespective of the number of bricks he may make. The difficulty is, how to apply these various conditions to that under which the imaginary tenant is supposed to hold in the Poor Law Act. These conditions would be, if they could be arrived at, "*in communibus annis*," but does the nature of the tenancy enable them to be so? The value of a railway is measured justly, in the opinion of the Court of Queen's Bench, by the profits of the working of the previous year, and if any material alteration takes place in the year after, whether for better or for worse, that alteration is allowed for; but the profits of the previous year are admitted as an average. Why should not this be the case with brick fields? The fact, that brick fields are not let at so much per acre per annum with the option of digging, is a proof that the nature of the letting precludes it. What is the object sought, is it not to find out what a brick field may be reasonably expected to let for from year to year? What it does let for, surely, is the best test of what it may be expected to let for, and if it lets for a fixed yearly rent for the surface land, and a varying rent for the brick land,—whose average might partly be ascertained by taking the mean of some years' working, where the lease was an old one—and most closely approximated to, in any one year, in the case of a new lease, by the number of bricks that were being made in the year preceding. The decisions given by the Court of Queen's Bench in reference to the peculiarity existing in this class of properties, are so conclusive, that even the few following remarks may seem almost unnecessary. It is sought by some to include the renewal of the *corpus* in the statutable, that is, in the allowance between the gross and the net; they forget that when a house falls down, it ceases to be rateable; how can the brick earth be rated when it is exhausted? The yearly sinking

fund for rebuilding the house might rebuild it, and the parish would then again get their rates, but no sinking fund could replace the brick earth, and if not replaced, how could the parish get their rates? Under these circumstances, whether the earth under a given area is used up in one or twenty years, the landlord can only realize the same aggregate rent, and the aggregate rateable value to the parish is the same, the parish simply getting the rates upon that value in one year or in twenty, according to the terms of the occupation or the pleasure of the tenant.

The cases of *Westbrook and Everest* are here annexed.

The Queen v. Westbrook and others. (a)

Rate ; Brick Field ; Rateable Value of ; Rent ; Royalty.

“ In calculating the rateable value of a brick field, in any particular year with reference to the statute 6 & 7 Will. 4, c. 96, the Queen v. Westbrook, 1847.
 “ royalty payable in respect of the number of bricks made, as well as
 “ the rent, may be taken into account, and neither the circumstances
 “ of the rapid exhaustion of the material, nor the casualties to which
 “ the article is subject in the process of manufacture, can affect the
 “ principle of the calculation. But if the sum for which it might be
 “ expected to let from year to year as a brick field can be ascertained,
 “ such sum will be the true estimate of its annual value.

“ E. W. rented a brick field of 10 acres at £2 per acre (without
 “ reference to the use made of the land,) and was also liable to pay to
 “ his landlord a royalty or realty of 1s. 6d. per thousand bricks
 “ moulded on such land. The session confirmed a rate at a rateable
 “ value of £159, which they calculated on the amount of rent and
 “ royalty, making all proper deductions, and they also found that the
 “ rent per acre which a tenant might be expected to give for the same
 “ field, with the liberty of taking the brick earth, and without any
 “ liability to pay any royalty in respect of the number of bricks made
 “ would be £10 per acre, or £100.

(a) *Vide ante*, p. 124.

"Held, that the latter sum, and not the former amount of £159, was the true criterion of the rate.

Queen v. Everest. (a)

*Queen v.
Everest.*

"H. E. rented a brick field of 26 acres, under an agreement to pay 2s. 3d. per thousand bricks made. The sessions confirmed a rate, at a rateable value of £550, calculated at 1s. per thousand bricks made. It was admitted that if the sum paid under the agreement was to be considered as a rent, £550 did not exceed the rateable value. No statement was made as to the sum a tenant might be expected to give. The rateable value of ordinary agricultural land in the parish was £1 10s., and of a garden, £3 10s.

"Held, that none of these amounts gave the true rateable value; but that the case must go back to the sessions to ascertain what a tenant would give within the meaning of the statute 6 & 7 Will. 4, c. 96.

Queen v. E. Westbrook.

*Queen v. West-
brook.*

"On an appeal by E. Westbrook and others, against a rate for the relief of the poor of the parish of Heston, in the county of Middlesex, the Quarter Sessions for the said county of Middlesex confirmed the rate, subject to the opinion of the Court of Queen's Bench on the following

CASE.

"The appellants are brickmakers by trade, and for the purpose of carrying on that trade they occupy various plots of land in the parish of Heston, in the county of Middlesex, amounting altogether to 123a. 2r. 36p. or thereabouts. They were rated by the rate or assessment appealed against in respect of their occupation of such land, in several sums, amounting in the whole to £177 7s. 7d., that rate being laid at the sum of 1s. 6d. in the pound on the amount of what the respondents contended was the right estimate of the annual value to let of the land in question. The only dispute between the parties at quarter sessions was as to the amount of the annual value in respect of which the rate ought to be laid on each of the appellants.

(a) Vide ante, page 124.

“ The following facts were agreed upon by the parties, and found
“ by the sessions.

“ In all previous rates the appellant had been rated on an estimated
“ value of about one-eighth only of the sum which is inserted in the
“ rate appealed against, and former rates having been laid with re-
“ ference to the value of the land for any purposes of agriculture to
“ which it might be applied ; but in laying the rate appealed against,
“ the respondents calculated the number of bricks which, on the land
“ in question, were capable of being made in the manner hereinbe-
“ fore mentioned, and the result was the large increase above stated
“ in the amount of the rates. In the business of brick making the
“ following things are necessarily done :—the superficial soil being
“ removed, the clay or brick earth is dug out, various foreign raw
“ materials are purchased and brought to the brick field by the brick
“ maker, for instance, chalk, breeze, sand, ashes, and straw : some of
“ these materials are always added to the clay or brick earth—sand
“ and breeze are always so used, and in the parish of Heston are
“ obtained by water and land carriage, the former from Woolwich, in
“ the county of Kent, and the latter from London, a distance of about 14
“ miles. The quantity of chalk, ashes, and breeze required to be used
“ depends on the quality of the clay—sometimes the clay requires to
“ be washed, and for the purpose of washing it a steam engine is
“ erected, and used in many cases, but does not happen to be so on the
“ field in question.

“ The clay has also to be ground or mixed in a mill, called a pug
“ mill, each pug mill is worked by one horse, and one is necessary
“ for each stool—a stool being a frame or table at which the bricks
“ are moulded, and a gang, consisting of a moulder, a temperer, an
“ off-bearer, a walk-flatter, two pug boys and a barrow boy. Each
“ stool is capable of making about 700,000 bricks in a year.

“ The amount of capital required to enable the brick maker to work
“ each such stool is about £900.

“ The appellants severally hold under such leases, and E. West-
“ brook holds the field above mentioned, for a term of seven or four-

“teen years, or till the earth is dug out, and is liable to pay to his
 “landlord £20 per annum as rent certain for the same, being a trifle
 “under the sum of £2 per acre, without any reference to the kind of
 “use which he may make of the land: and he is also liable, in addition thereto, to pay his landlord a separate sum, called a royalty or
 “realty of 1s. 6d. for every thousand bricks moulded on such land
 “in any one year. *The rent, per acre, for the above mentioned*
 “*10a. 1r. 32p. which on so taking a lease thereof, with liberty to consume the soil and clay or brick earth (and without any liability to*
 “*pay any royalty in respect of the number of bricks made) any tenant*
 “*would have been willing to pay, would have been the sum of £10*
 “*per acre.*

“If the court of Queen’s Bench should be of opinion that the respondents’ mode of rating was correct, the order of sessions was to
 “be *affirmed*; otherwise that order to be quashed, and the rate to be
 “amended, and any such other order to be made in the premises as
 “to the court of Queen’s Bench should seem to be just.

The Queen v. Henry Everest (a).

Upon an appeal by Henry Everest against a rate for the relief of the poor of the parish of Frindsbury, in the county of Kent, the sessions confirmed the rate, subject to the opinion of the court on the following

CASE.

The appellant is the occupier of a piece of land in the parish of Frindsbury, containing brick earth, on which he makes and burns bricks. He entered on the occupation by virtue of the following agreement, and has since continued to occupy upon the same terms, without any formal renewal of the contract:—

“Memorandum of an agreement entered into the 3rd July, 1835,
 “between John Batten, of, &c., of the one part and H. Everest, of,

(a) 10 Q. B. 178, and 16 L. J. Rep. (N. S.) M. C. 87.

“ &c., of the other part. First, that the said J. Batten agrees to let
 “ to the said H. E., a certain piece of land as a brick field, (which is
 “ now, and has been for the last years, in the occupation of
 “ the said H. E.,) as marked out, &c., containing, &c., together with
 “ the cottages thereon, to make and burn bricks for three years cer-
 “ tain, from Christmas, 1834, to Christmas, 1837, on the following
 “ terms :—

“ To make or pay for one million of bricks, at least for each year
 “ of the above period, at the rate of 2s. 3d. per thousand, and so on
 “ for every thousand beyond the said million, to be considered and
 “ estimated by and between the parties hereto, to be the same number
 “ as the duty to the King is actually paid for.

“ Such payment to be considered due and payable as a rent, and
 “ to be made on the 25th of March and the 29th of September in
 “ each year, during the said term hereby granted, and in each year
 “ of the said H. E.’s occupation,” &c., (with powers of distress ;) and
 then followed an agreement to pay at the rate of £3 per acre for land
 not occupied for brick making, and for levelling the land broken
 up, &c.

The appellant duly appealed against this rate, on the ground that
 he was overrated in respect of the yearly value of the land in his
 occupation. The clay or brick earth dug in the land in question is
 never sold as such by the appellant, and is only one of the materials
 used in the manufacture of bricks. The other materials used in the
 manufacture of bricks are chalk, ashes, sand, and breeze—all of
 which have to be brought to the brick field from other places. The
 manufacture is attended with great risk and uncertainty, and in the
 process of making, the bricks are exposed to considerable damage
 from rain and other accidental causes, for which, however, an allow-
 ance of one-tenth from the gross number is made by the Excise in
 charging the duty. When the rate appealed against was made, the
 appellant had twenty-two stools for the purpose of brick making upon
 his brick fields. The sum of £800 per annum is necessary for the proper
 working of each stool. The sum paid by the appellant to Mr.
 Hankey, under the memorandum of agreement, at 2s. 3d. per 1000

bricks made, amounted, in the year 1840, to £1,010 9s. 6d., in the year 1841, to £928 1s. 4d., in 1842, to £960 7s. 2d., in 1843, to £953 13s. 3d., and in 1844, to £1,324 4s. 9d.

The question for the opinion of the court was, what was the net annual rateable value of the land in question?

If the sums paid by the appellant under his agreement, were to be considered in the nature of rent, and as such ought to form the basis of the rating, the order of sessions was to be confirmed. If either of the modes contended for by the appellant should be considered correct, the case was to be sent back to the sessions, that the rate might be adjusted accordingly.

Lord Denman, C. J.—“These were cases sent from the sessions “respectively of Middlesex and Kent, which may properly be considered together, being intended to procure a decision on the same “question, the proper mode of rating the occupiers of brick fields to the “relief of the poor. The material facts found in both cases are nearly “the same. In both it is stated that much expense, and the introduction of foreign matters, are necessary in order to make the occupation “productive and profitable, and the result is liable to much risk. It is “understood, therefore, if not made legally certain, that the tenancy “shall be of some years’ duration, and the rent is in part only fixed, in “part made to depend, in the nature of a royalty, on the number of “bricks made. The material, the brick earth, is not in its nature “renewable, and in both cases will be consumed, according to reasonable “calculation, within no great number of years. In both cases, the “basis of the rate has been the supposed total amount paid to the land- “lord, considering as well the royalty as the fixed sum to be rent, and “to be the proper criterion within the Parochial Assessment Act, of the “rent at which the land may reasonably be expected to let, from year “to year, free of such charges, and making such deductions as the “statute specifies.

“In the case of Westbrook, however, the sessions found ‘*the* “*rent per annum, which, on taking a lease, with liberty to consume* “*the soil and clay, or brick earth, and without any liability to pay* “*any royalty in respect of the number of bricks made, any tenant* “*would have been willing to pay, would have been the sum of £10* “*per annum only.*”

“ No finding, correspondent to this, appears in the case of Everest.
 “ The question which we have to determine is, whether the principle
 “ on which the parish officers have proceeded is correct, with reference
 “ to the statute before alluded to ?

“ We must assume the amounts to be correct, both as to the royalty
 “ and the deductions made; and no question involving any difficulty
 “ in principle was raised as to the nature or number of these last. It
 “ will be convenient, in the first place, to consider the question, *with-*
 “ *out reference to the special finding in Westbrook's case, and then*
 “ *to see whether that finding makes any difference in the decision of*
 “ *that case.*

“ It is objected by the appellants, in the first place, that it is a fal-
 “ lacy to infer from the fact that there are so many stools on the ground,
 “ from which so many thousand bricks may be made in each year,
 “ that so many will in fact be made and paid for; or, secondly, from
 “ the fact, that so many may have been made and paid for in one year,
 “ that the same, or an equal number will be made and paid for in the
 “ following year and years; and, without doubt, the conclusions do
 “ not follow with certainty from the premises. But the answer to the
 “ first of these questions is, that it is rather a question of amount than
 “ of principle: it does not touch the question, of whether the royalty is
 “ in substance a rent? Considered *as a question of amount only, the*
 “ *parish officers having to make a prospective rate, may well look*
 “ *to see what it is probable the land will be made to produce in the*
 “ *current year: they may well proceed with a brick field as they*
 “ *would with land used for agriculture.*

“ They cannot in that case, tell for certainty how much will be tilled,
 “ nor with what grain, still less how much will be produced, or at what
 “ price sold. Yet, supposing the tenant to occupy at a rent, to be ascer-
 “ tained in each year by the actual produce and price, as it well might
 “ be, they may reasonably beforehand, from such premises as the nature
 “ of the land, its usual mode of cultivation, the preparations actually
 “ made, if any, and other such circumstances, infer what will be the
 “ rateable value in the given year. In the present case, we cannot
 “ say that the nature of the occupation does not afford rather safer
 “ premises for drawing the conclusion as to amount. The preparations
 “ are somewhat of a more permanent nature. It is not unreasonable to
 “ infer that the stools would not be erected but with the intention of

“ making bricks, and that more would not be erected than the quantity
 “ of bricks to be made would require, and that more bricks would not
 “ be made than were expected to be sold, especially as the duty to
 “ Government, and the royalty to the landlord, are to be paid, not on
 “ the sale, but on the making. These premises raised at least a *prima*
 “ *facie* case: and if they led to an exaggerated conclusion, *it was in*
 “ *the power of the appellants to have shown the error by actual proof.*
 “ As to the second objection, the answer is, that the rate is made but
 “ for the year, and any falling off in succeeding years would, of course,
 “ operate in reduction of the rate for those years.

“ But the next objection is a more important one: that it is alto-
 “ gether wrong in principle to consider the royalty as rent; and this
 “ appears to be founded mainly on this, that it is a sum paid not in
 “ respect of the renewing produce of the land, but of a portion of
 “ the land itself, and that not consumed by slow degrees, and to be
 “ exhausted at the end of a long period, as is the case with a coal
 “ mine, under which circumstances it was admitted that it might be
 “ treated as produce, but in such large proportions that the whole in a
 “ *few* years would be exhausted. It does not appear to us that the
 “ circumstance of a *more or less rapid consumption* can make any
 “ difference in the principle. The rate is always imposed with refe-
 “ rence to the existing value, whether temporary or enduring is
 “ immaterial. A case was supposed of a brick field worked out in less
 “ than a year, to meet the demand of some enormous contract for a
 “ public work, the consequence would be, that the land would have a
 “ very much increased rate for that year; in the following year its
 “ value might *sink almost* to nothing, and the rate ought to fall pro-
 “ portionately, *even to nothing, if the brick earth being exhausted,*
 “ *the land, like an exhausted coal mine, should become entirely un-*
 “ *productive.* If this were not so an obvious injustice would be done
 “ to the ratepayers. Suppose two brick fields of the same size, which,
 “ if worked, so as to be consumed in ten years, and by equal working
 “ in each year would produce £1000 each, on which the rate should
 “ be ten pounds in ten years, each will contribute one hundred pounds
 “ to the parochial authorities; let one be exhausted in the first year,
 “ the produce will have been £10,000, but the rate only ten pounds
 “ for that year, according to the appellant’s argument, and it may be
 “ nothing afterwards, but, whatever it be afterwards, it is clear that

“ there will have been a valuable occupation in one year, escaping as
 “ to nine-tenths the rate entirely. But no injustice would be done if
 “ in every year the occupier could be assessed according to the actual
 “ value in that year, and it is the duty of the overseers to arrive as
 “ nearly at this as they can. The case of *King v. Mirfield* was men-
 “ tioned in the course of the argument, the facts of that case are wholly
 “ unlike the present, the saleable underwoods there produced no
 “ profit, except in the twenty-first year, here there is nothing to show
 “ that equal profits may not arise in every year of that tenancy ; long
 “ or short, the term of tenancy is fixed on that assumption ; the
 “ principle of that decision, however, is in accordance with what
 “ will be our conclusion.

“ We come then to the bare objection, that the royalty is paid, not
 “ for the renewing produce of the land, but for several portions of the
 “ land itself, mixed up with foreign matter. *The expense, however,*
 “ *must of course have been cast off before* the royalty itself was fixed.
 “ That was a sum, which, after all such expenses were paid, the occu-
 “ pier could afford to render to the landlord. When the case is thus
 “ laid bare, *there is no distinction between it and that of the lessee of*
 “ *coal mines, of clay pits, of slate quarries ;* in all these the occupa-
 “ tion is only valuable by removal of portions of the soil, and whether
 “ the occupation is paid for in money or in kind, is fixed beforehand,
 “ by contract, or measured afterwards by the actual produce ; *it is*
 “ *equally in substance a rent ;* it is the compensation which the occu-
 “ pier pays the landlord for that species of occupation which the con-
 “ tract between them allows. This would not admit of an argument
 “ in an agricultural lease, where the tenant was to pay a certain
 “ portion of the produce, that would be admitted to be in all respects
 “ a rent service, with every incident to such a rent, and in *Daniel v.*
 “ *Gracie* we held the same with regard to a marl pit and brick mine,
 “ as the parties termed it, where the render was of so much per cubic
 “ yard of the marl dug, and so much per thousand of the bricks
 “ made.

“ We are brought, then, to the conclusion that the parish officers have
 “ done right *in considering the royalty as a portion of the rent,* and we
 “ see no objection to the mode by which they arrive *primâ facie* at the
 “ conclusion, that the amount of royalty reckoned in the rate will be
 “ paid in the year for which the rate was made.

Westbrook
may have
agreed to give
too much ;

in other words
to prove that
he promised to
pay too much.

“ Still, it must always be remembered, that the ultimate question is
“ that propounded by the statute, and therefore the amount which has
“ been paid, or what is reasonable to infer will be paid, is only evidence,
“ not the fact itself to be ascertained. When, therefore, the case came
“ to the sessions, it was open to the appellants to prove such uncertainty
“ in the market, or such circumstances affecting the process of making,
“ as showed that the parish officers had done wrong in concluding
“ from such a quantity made or expected to be made, that the land
“ might reasonably be expected to let, at a rent measured by that
“ quantity ; such evidence would have raised a question of fact for the
“ sessions, and they would have had upon the whole to sustain or
“ reduce the amount of the assessment. *It may well be, that although*
“ *at the end of the year the lessee has made so many bricks, that he can*
“ *afford to pay one hundred and fifty pounds in royalty to his landlord,*
“ *he could not prudently at the beginning of the year contract to pay*
“ *more than one hundred pounds, and if so, the latter, rather than the*
“ *former, will be the sum at which the land may reasonably be expected*
“ *to let from year to year.* And this is what we understand the
“ sessions mean in *Westbrook's case*, by the special finding. The
“ parish officers estimate the rent at a supposed amount of bricks
“ actually made, and the royalty then payable on such amount ; from
“ this they make such deductions as reduce the rateable value to one
“ hundred and fifty-nine pounds ten shillings, but the sessions say,
“ that, placing the tenant exactly on the same footing as to the incidents
“ of his occupation, *but calling on him to say beforehand*, what rent he
“ would pay per acre for it, he could not be expected to give more than
“ ten pounds per acre, which, on the whole, would amount to a little
“ more than one hundred pounds. This latter appears to us to be the
“ true criterion rather than the former, and the rate must be amended
“ accordingly.

“ It is not so easy to deal with *Everest's case*. The sessions ask us,
“ what is the net annual rateable value of the land ? and add, if the
“ sums paid are to be considered in the nature of rent, and as such
“ ought to form the basis of rating, their order is to be confirmed ; if
“ either of the modes contended for by the appellant be correct, the
“ case is to be sent back, that the rate may be adjusted accordingly.
“ Now, *neither of the appellant's modes are correct, nor were contended*
“ *so to be ; they were in effect to rate land occupied in one mode, as if*

"it were occupied in another, the modes producing different rates of
 "profit, and commanding different amounts of rent, than which
 "nothing can be more unreasonable. But, on the other hand, although
 "the sums paid are in the nature of rent, it does not follow that they
 "must form the basis of the rate in the sense of fixing its amount.
 "The true question is that which the sessions ask, but which they must
 "answer for themselves, by finding, upon evidence according to the
 "principles laid down, what, in the words of the statute, is 'the rent
 "at which the land may reasonably be expected to let from year to
 "year,' remembering the purposes to which it is to be applied, and
 "the privileges which the tenant will enjoy under his contract and by
 "reason of his occupation, and after making all the deductions specified
 "in the statute. It by no means follows that this mode of examina-
 "tion will produce so great a change in *Everest's case*, as it has in
 "*Westbrook's*. The circumstances may be such as to risk, or market,
 "or competition, as to make the difference little more than nominal
 "The market may be so sure, the competition so great, as to make the
 "risk almost nothing. Still this is the question to be tried, and for
 "the purpose of trying it, this case must go back to the sessions. Both
 "orders should go back to the respective sessions, that the rates may be
 "amended according to the principles laid down."

That is as to
 amount,
 unless so
 found as
 correct by the
 sessions.

Simply as to
 amount not as
 to principle.

The orders were sent back to the sessions accordingly.

The judgment of Lord Denman has been given in full, as
 the views expressed therein are clearly applicable to each of
 this class of cases, and because the connection of the reasoning
 would have been destroyed by the omission of a single sentence.
 And so also have the head notes, as giving a most correct sum-
 mary of the judgment, and, as being likely, if mutilated, to mis-
 lead. Clear, however, as this judgment is, and fairly and
 honestly as these head notes give the summary, (they do not
 always do so,) this judgment and summary still continue
 to be misunderstood. A few observations may not therefore be
 out of place.

The two cases of *Westbrook* and *Everest* agree as to the
 general terms of their tenancy; that is, they each pay a surface

rent and a royalty. As to the royalty, Lord Denman says, "we are brought to the conclusion that the parish officers *have done right in considering the royalty as a portion of the rent.*" And they agree in one respect as to the findings of the sessions, viz., that the one shilling and sixpence per thousand was actually paid in *Westbrook case*, and two shillings and three-pence per thousand in that of *Everest*, and in the omission of any finding of the sessions, that these amounts were fair and reasonable.

But they differ most seriously in this, that in the case of *Westbrook*, the sessions found, "that the rent per acre which a tenant might be expected to give for the same field, with the liberty of taking the brick earth, and without any liability to pay any royalty in respect of the number of the bricks made, would be £10 per acre," while in that of *Everest*, that or a similar finding was entirely omitted.

This finding, of course, at once disposed of the case of *Westbrook*. It was a question of fact. The sessions did not state why they found it, and consequently the Queen's Bench could not find fault with reasons that were never given, nor could the respondents find fault with the finding, because they had allowed it to stand part of the case.

The omission of it in the case of *Everest* gave the court an opportunity of laying down the correct principles of valuation, unfettered by any findings of the sessions. And Lord Denman virtually says, as regards the *Everest case*, "H. E. rents a brick field, and agrees to pay 2s. 3d. per 1000 bricks made, and has, under an agreement, paid certain sums during certain years by way of royalty, and we are of opinion that the question of royalty ought to be taken into account; but as there is nothing in the findings of the case to say that the royalty paid is a fair and proper amount, or that the tenant, though he may have paid the sums he has paid at the end of the year upon a certain number of bricks made, could have prudently at the beginning have contracted to

“ pay more than a much lower sum. In other words, as the
 “ rent agreed to be paid is not necessarily the probable rent at
 “ which the property might be reasonably expected to let, and
 “ as the sessions have in the case simply sent us the former,
 “ and given us no figures by which we can arrive at the latter,
 “ whereas, in the Westbrook case, the sessions there have as-
 “ certained that rent, and made it part of the case; all we can do
 “ is to say, that in Everest’s case none of the amounts give the
 “ true rateable value, (as they are amounts which, though ac-
 “ tually paid at the end of the year, may not be prudently con-
 “ tracted for at the beginning,) and that, therefore, the case
 “ must be sent back to ascertain the fair and reasonable rent
 “ which the tenant might be expected to give within the mean-
 “ ing of the statute 6 & 7 Will. c. 96.”

It is clear from his own words, that Lord Denman depended a great deal upon the finding of the sessions, viz., “ *that if the principle of taking the amount of bricks made, and the royalty payable upon them were adopted, the rent would be £159, while the rent a tenant might be expected to give would be only £100,*” and therefrom concluded that though in Everest’s case, “ *it by no means follows that this mode of examination will produce so great a change as it did in Westbrook’s. The circumstances may be such, as to risk of market or competition, as to make the difference (between what he has paid and what he might prudently have contracted to pay) little more than nominal. Still, this is the question to be tried, and for the purpose of trying it the case must go back to the sessions.*”

In reference to this case, and the conflicting findings of the two quarter sessions, the reader’s attention must again be called to the General Observations at page 35, and more particularly to the first paragraph, at page 36.

The findings of quarter sessions depend upon the evidence put

before them. They are bound to find upon the evidence. The evidence may be misunderstood, may be incorrect, may be false—the sessions are bound to accept it, if not contradicted. And the Queen's Bench must accept the findings, and deal with them as facts.

In the Phoenix Gas Case (*a*) the counsel inquires of the gas engineer, who is witness for the company :

Q. What would any tenant taking gas works, have to pay independently of his rent? For instance, would he have to pay for retorts, meters, &c.?

A. Yes, he would, *according to a well recognized practice in making estimates of this kind.*

Upon this question and answer the Maidstone sessions found, and made a part of the case, viz., that it was proved on the part of the appellants, and found as a fact by the sessions *upon the evidence* before them, which they had entirely misunderstood, that according to the practice and course of business in letting or hiring gasworks (the evidence was according to the well recognized practice in making estimates for rating purposes,) the tenant would have to take to and find capital for all the property comprised under the head of meters, retorts, &c.

SECTION II.

Cemeteries.

These come under the same class of property as brick fields. A property, where the destruction of the corpus is constantly going on; where the income derived, and for which the rent is paid, consists, not only of constantly recurring fees and yearly charges, but of monies paid once for all for using up the corpus, the very subject matter of the rate itself. The yearly dividends payable to the shareholders being really in the nature of terminable annuities. Under these cir-

(a) *Vide* 18th finding, page 122.

cumstances, the companies naturally contended that the yearly revenue should be divided, and that only *so much* of (what was virtually the purchase-money of the fee simple of the land of the cemetery,—to be exhausted at some time,—should be brought into assessment, as would leave a sufficient sinking fund to replace the capital of the company, where all the ground of the cemetery was taken up.

This view of the companies was embodied in the case of *The Queen v. The Inhabitants of St. Mary Abbot's, Kensington* (a), which was heard before the court of Queen's Bench in the year 1846.

St. Mary
Abbot's, Ken-
sington.

The company (the General Cemetery Company), incorporated by statute (2 & 3 Will. 4, c. 110), had purchased land, and erected the buildings for which they are rated. They prepared the greater portion of the ground for the purposes of a cemetery, in which interments take place as in common burial grounds. They also made catacombs and vaults, which are wholly unproductive until disposed of under the Act; but many are annually disposed of in perpetuity, according to the form of conveyance given by the statute, and for the uses therein set forth. Certain portions of the ground have also been annually disposed of, by the statutable conveyance, for family graves. The purchasers of the vaults have had the keys delivered to them after closing them up as directed by sect. 43, and have done all requisite repairs, the company never exercising any act of ownership in respect of them after such sales; but at each subsequent interment in the family vaults thus sold, they charge various fees for the services of the minister, clerk, sexton, &c.

The rate in question was founded upon the principle that the company were liable to be rated for the produce of the ground so sold or disposed of for family graves, and for the catacombs and vaults so sold or disposed of during each year for the purpose of burial, after deducting therefrom all the expense of building the catacombs and vaults, and all other expenses attendant on preparing them for use; and also to be rated upon all the fees paid for the services of the clergyman, clerk, sexton, &c. (deducting therefrom the stipends paid by the company to them, and all other necessary expenses upon such interments), and likewise upon all fees due on common interments,

(a) 12 A. & E. 824.

where no rights in perpetuity or for a term had been granted; and upon the herbage growing in the cemetery. The appellants contended that the company were not rateable in respect of the produce of the family graves, catacombs, &c., so sold or disposed of during each year, but only upon the fees paid upon all burials therein, and upon common interments (deducting the aforesaid stipends and necessary expenses), in addition to the herbage as before mentioned. If the court should be of opinion that the company were rateable for the sums received by them in respect of the sales for family graves, catacombs, and vaults, then the original rate was to be confirmed. But if the court should be of opinion that the company were only rateable in respect of the fees and herbage, then the rate was to stand, as reduced by the quarter sessions, at £444 18s.

Lord Denman, C. J.—“The company are occupiers of the whole premises. The cemetery is under their control and superintendence; and by section 44, they are bound to keep the whole in repair. They must be assessed upon the whole of their profits.”

Littledale, J.—“The Act gives the company power to construct vaults and catacombs, which they may hereafter convey in perpetuity or otherwise. This power of disposing of the right of burial in perpetuity makes no difference in principle; they are still the occupiers of the whole cemetery. It does not appear that the owners of the vaults have the keys of the outer inclosure, though the company deliver them the keys of the vaults. The purchasers have nothing but a right to a certain mode of enjoying portions of the land from which the company derive a profit.”

Williams, J.—“No doubt the company are in the occupation of the whole cemetery. They have the regulation and the repair of it, and the general superintendence over it. They have the control of the external entrance. We lately had occasion to consider the principles on which persons are rateable as occupiers of land, in *Rex v. The Mayor, &c., of York*; but this is a much stronger case of occupation. It is a fallacy to treat the conveyance here as a sale of the land. The company have no power to sell any but the surplus land not used for the cemetery. By the grant they only part with the exclusive right of sepulture.”

Coleridge, J.—“ If the company are in occupation of the whole cemetery, there is no difficulty, for it is unnecessary that there should be annual profits. Some facts stated in the case look like an occupation by the purchasers; but they are explained by reference to the statute. Sect. 4 gives the company a limited power of sale; and sect. 7 must be construed in conformity with that provision. The land appropriated for interment cannot be sold. The sales, therefore, made under sect. 43, convey only a peculiar easement, and do not deprive the company of the general occupation of the whole.

Order of sessions quashed.

There was another case, which was heard in the year 1848, *The Queen v. The Inhabitants of St. Giles, Camberwell*,^(a) where other points were raised,—not by the company, who appear to have acquiesced in the ruling in the case of *St. Mary Abbot*,—but by the parish, who, dissatisfied with the result that an estimate on the profits of rating would give, as laid down in that case, sought to ignore the decision, and establish in lieu thereof an entirely new principle. They contended that the valuation ought to be made on a percentage of the outlay expended upon the land, and improvements, allowing the usual deductions. There was also another point which the parish contended for, viz., that the cemetery in Camberwell ought not to be charged with the expenses of management incurred at the London office.

By the stat 6 & 7 Will. 4, c. 136, incorporating the London Cemetery Company, the company were required periodically to appoint directors, who should manage the business and concerns of the company (subject to their control), keep and use the common seal, have the custody of books, deeds, &c.; call meetings; purchase and sell lands; appoint and displace chaplains, &c., &c.; also auditors, who should examine the report to be made by the directors, &c. The company had two cemeteries, in Middlesex and Surrey. The duties and authority of the directors extended to both.

On the hearing of the appeal, the appellants contended that the proper mode of ascertaining the rateable value of the cemetery was by estimating what a tenant could afford to pay as rent for it, who

(a) 19 L. J. Rep. (N. S.) M. C. 122; 14 Q. B. 571.

was obliged to carry on the concern in the same way as the company are by their Acts of Parliament compelled to do; and that in order to arrive at such rent, there should be deducted from the gross revenue of the Nunhead Cemetery, viz., £2,536,—first the local expenses, £1,628, which would leave £908. Secondly, 10 per cent. on £2,536 for tenants' profits. And lastly, one half of the sum of £912 14s., being the expenses of management, directors, auditors, &c., incurred at the common London office.

The respondents contended that the profits derived to the company were not the sole or proper test of the rateable value. That the usual and the fair mode of arriving at the rent was by a percentage on the outlay upon the land and improvements. But if the court should decide in favour of the company's view, then they contended that the company were not entitled to deduct the general expenses of management.

The sessions held, that the revenues derived by the company from the cemetery was the proper criterion of its rateable value, and generally supported the views of the company, reducing the rate from £480, on which the company were assessed, to £377, subject to the opinion of the court of Queen's Bench.

Patteson, J., in the ensuing vacation, in delivering judgment, said, "Much discussion has taken place; but ultimately the question has turned upon the propriety, or otherwise, of deducting for the general expenses, including payments to the directors and auditors. We are of opinion they ought not to be allowed, and therefore there will be judgment for the appellants,—that the assessment be restored to £480; the amount of the deduction, which we think ought not to be allowed, making more than the difference between £480 and £377, the amount to which it was reduced by the order of sessions."

Rate to be increased accordingly.

NOTE.—This decision regarding the directors' fees is altogether at variance with that given in the *Southampton Dock case* (a), where it was held that the fees payable to directors and auditors were an allowable deduction.

Upon the important question, whether the court would confirm the ruling in the *St. Mary Abbots, Kensington case*, or establish a new principle, the court had so decidedly expressed their opinion in the course of the argument, that the respondent's counsel, addressed themselves at last more especially to the question of costs of management, and to this question solely Mr. Justice Patteson referred in his judgment.

SECTION III.

Coal Mines.

These come within the same category as brick fields, cemeteries, and are to be treated in the same way. Much has been said about the rating of coal mines,—much has been written about them; but the mode of dealing with them must be the same as with all properties similarly circumstanced, where the value to the tenant taking would depend upon “*the profit he could make out of the concern.*”

It is the same thing over again. The yearly receipts, less the expenses, become the profits divisible between the landlord and tenant; what sum out of these profits would he be willing to give the landlord as rent, and what sum would the landlord be willing to accept? The amount—at first probably at issue between them—would soon be settled by the ratio of demand and supply,—neither would be allowed to have it entirely his own way.

No other principle but this could ever be recognized by the court of Queen's Bench.

Before giving an example of the principle of assessment, a few observations may be useful.

Royalty is not rent. That is rent of a coal mine in working condition, that is, in that condition in which it could be rateable; it is merely the yearly payment for the privilege of opening up and removing, approaching to or receding from the real rent, that is the net rateable (for in all cases of coal-mine leases the tenant maintains,) according to the smaller or greater difficulty, or less and greater expense that the lessee is likely to be put to in getting at and extract-

ing the coal ; and according also to the situation of the colliery, whether favourable or otherwise, for shipment or inland consumption.

If the coal seams are very low, and the shaft to be sunk is deep ; if the mine has to be drained, and heavy engine power has to be used for pumping and raising ; and if the colliery be distant from home consumption, and from a port for transshipment, then the royalty becomes a minimum.

It might be a question, under these circumstances, whether a royalty could be paid at all,—whether it would be worth while to work the mine, whether the profit from the coal would pay the royalty and make a fair return for the money invested in opening up the mine and putting up the machinery ; but if it were brought into working order, though the profits might not be sufficient to pay the royalty and give a fair interest upon the outlay, yet the mine would still be rateable, and the rateable value would be not the royalty only, but the royalty increased by such interest upon the outlay as the profits of the mine could afford to pay (after the tenant has been allowed his own profits).

It must not be forgotten that the first lessee of a coal mine, who takes the land direct from the landowner, and pays a royalty, is not the tenant contemplated under the Poor Law Act. He simply stands in the position of a building lessee. When he has opened up the mine, and dug and put up machinery, and brought it into working order, and then either uses it himself, or leases it to another,—then only does he or that other become in the position of the imaginary tenant, paying rent, not for the land, but for all that has been put upon it.

Again, collieries are exhaustable, like brick fields ; like cemeteries, they cannot be renewed ; they can only be rateable for the whole quantity of coal that can, either in a short or long time, be raised. The landowner can only get royalty for that coal ; when that coal is exhausted, that royalty ceases, and the property ceases to be rateable. The effect of the property being exhaustable, would be to increase the royalty (if the nature of the working admitted of doing so), but certainly not to diminish it. There can be no claim, therefore, for a sinking fund to continue the royalty when the mine is worked out.

Neither can there be a deduction allowed for “ winning the col-

liery," that is, for providing for the redemption or reproduction of the money sunk by the building lessee, or first lessee, under the landowner. As between the landowner and his first lessee, it might become a question whether, if the lessee wished the landowner to "win" the colliery for him, and over and above the royalty, charge him, (the lessee,) with a further rent for doing so; the landowner would not in the rent he would ask include an amount sufficient besides the usual statutable, to allow for replacing the money advanced, so that he might claim 7 per cent. or 8 per cent. upon this outlay, instead of 5 per cent. or 6 per cent.

What the landlord would expect would be royalty upon the coals raised to the surface, interest upon his outlay, calculated upon the probable time the machinery could be kept in effective use, and providing for the replacement of the capital sunk at the end of that time, and a yearly allowance to maintain and uphold the corpus. This would be the gross rent, and the perishable nature of the property would go to increase that rent, not to diminish it; that is, if the rent of the colliery were to be ascertained by means of adding to the royalty a fair interest upon the outlay incurred in winning the colliery; then the benefit of that, outlay not being permanent, a higher, not a lower, rate of interest would have to be allowed by way of rent. It must be understood here that the engines, buildings, and plant are part of the corpus, and are to be provided for in the statutable, but that no provision is to be made to renew or replace that part of the corpus which cannot be carried away and taken elsewhere. This comes under the same category as the land, and would cease with the royalty,—*"no longer useable,—no longer rateable."*

The royalty, and the rent upon the building, lessee's outlay, are not, taken together, the actual rent that the tenant could from the business afford to give, but only what the intending tenant thinks he can give. The two are simply estimated rent fixed by agreement between the landlord and tenant,—not determined by fact. The annual working of the colliery could alone show what the business would allow.

The following are the decided cases :

The King v. John Attwood, Esq. and others (a); and

The King v. Lord Granville (b).

The King v. John Attwood, Esq. and others.

The owner and occupier of coal mines is rateable to the poor at the sum for which the mine would let, subject to outgoings. The lessee of coal mines is rateable for the amount of royalty or rent which he pays, and in neither case is any allowance to be made for money expended in rendering the mines productive.

On the 29th day of March, 1825, the churchwardens and overseers of the parish of Rowley Regis, in the county of Stafford, made a rate for the relief of the poor, in which the above John Attwood was assessed as owner and occupier, and Thomas Devey Wightwich, John Jones, and Joseph Feredey, and Josiah Parkes, were assessed as lessees and occupiers of certain coal mines then at work.

Upon an appeal to the Midsummer general quarter sessions for the county of Stafford, the rate was confirmed, subject to the opinion of this court, upon the following case:—The appellant, John Attwood, was the proprietor and occupier of the coal mine, upon which the above rate upon him was made (which mine is situate in the parish of Rowley Regis, in the county of Stafford), and had expended upwards of £10,000 in *planting the mine and setting it to work* (c). The mine had been at work one year and a quarter. The value of the whole of the coals which had then been raised from the mine did not exceed £5,000. The full value of the annual produce of the mine in question, after deducting the current expenses of working the same, amounted to the sum of £428 9s. Upon that amount the appellant was rated.

The appellant, J. D. Wightwich, had been for five months prior to the said 29th day of March, 1825, lessee of the coal mine upon which the rate upon him was made, and which is situate in the said parish of Rowley Regis; and during the five months that he had been lessee he had paid £785 14s. in royalties for coals raised; he had also expended, in the purchase of the lease, and setting the mines to work, £5,020. During the five months that he had occupied the mine he had raised coals to the amount of £3,825 2s. 8d.

(a) 6 B. & C. 277.

(b) 9 B. & C. 188.

The appellant, J. D. Wightwich, was rated upon the sum paid for royalties, the sum of £785 14s. being considered by the respondents as the annual value of the royalties paid by him.

The appellants, John Jones and Joseph Fere dey, were the lessees of the coal mines upon which the rate upon them was made, and which are situate in the said parish of Rowley Regis. Sir Horace St. Paul, the owner and lessor of the mines, sunk the pits, and made preparations requisite for working the mines, and then let them to the appellants, Messrs. Jones and Fere dey, at a certain fixed royalty, not a specific proportion of the amount of sales. £492 12s. 8½d. was the amount of royalties paid to the lessor during the last year. The lessees had expended £600 in permanent erections on these mines. The appellants, Messrs. Jones and Fere dey, were rated upon the supposed amount of the annual sums paid for royalties. The appellant, Josiah Parkes, had been eight years lessee of the mine upon which the rate upon him was made, and which is situate in the said parish of Rowley Regis, and had expended £2,500 in planting the mine and setting it to work. During the last year he had raised coals to the value of £2,500, and during that period had paid £585 in royalties, and was rated upon the supposed amount of the annual sums paid for the royalties.

The questions for consideration are,—first, whether under all the circumstances of the case, Mr. Attwood was properly rated at the sum of £438 9s. in respect of the said coal mine, such sum being the full value of the annual produce of the mine, after deducting the current expenses of working the same; and, secondly, whether the said J. D. Wightwich, John Jones, and J. Fere dey, and Josiah Parkes, were rateable in respect of their occupation of the said coal mines to the full amount of the sums paid for royalties upon the coals raised from such mines.

Abbott, C. J.—“ We are all of opinion *that the owner and occupier of a coal mine should be rated at such a sum as it would let for, and no more.* As to the other points, the first was, that the rate should not be imposed upon the coal produced, because *that was part of the realty.* It is the first time that such a proposition has ever been submitted, although many coal mines in various parts of the coun-

"try have constantly been rated; and the argument in support of it is wholly untenable.

"The legislature has expressly made coal mines rateable, and they must be rated for what they produce, viz., the coals.

"*Slate quarries and brick-earth are also exhausted in a few years, but, nevertheless, the rate is always imposed upon that which is produced.* The other argument was, that the rate could not be imposed until the expense of planting the mine had been recouped. But I cannot discover any distinction between expenses incurred in bringing a mine to a productive state, and in building a house. The attempt to distinguish them is perfectly novel; and if a house is to be rated as soon as built and occupied, it must follow that a coal mine is rateable as soon as it is set at work and produces coals, although it may happen that the expense of sinking it may never be recovered. If the tenant of a mine expends money in making it more productive, that is the same as expending money in improving a farm or a house, in which cases the tenant is rateable for the improved value."

Order of sessions amended as to the rate upon Attwood, and confirmed as to the residue of the rate.

In this case there are three appellants, each differently circumstanced. By putting the last two in the same category, and assuming that the same question was involved in each appeal, the court have applied the same rule to these parties very differently situated.

In the case of the *first*, the parish were evidently in error in rating the occupier for the whole of the year's net profits of working, without allowing deductions.

In that of the *second*, the court confirms the rate, though that rate is based upon five months' royalty, and not twelve, and takes no account of the outlay of £5,020 in the purchase of the lease, and in setting the mine to work, or winning it.

In that of the *third*, the appellants, John Jones and Joseph Fereday, had taken a mine, which the owner had commenced to win; having sunk pits and otherwise prepared for working; for this they paid a royalty (not of course a royalty in the same sense as in the second case, for that simply contemplated a right to open; this contemplates interest

upon the outlay as well). They had also themselves laid out £600 in permanent erections, or had completed the winning. The royalty, moreover, was a certain fixed royalty, not depending upon sales. Upon this royalty the rate is based, and the court confirm the rate, the head note enunciating, "*the lessee of coal mines is rateable for the amount of royalty or rent which he pays, and in neither case is any allowance to be made for money expended in rendering the mines productive.*"

As to the decisions in this case, the reader had better refresh his memory with another perusal of the General Observations, at page 35, and more especially those contained in the second paragraph, at page 36.

In *The King v. Lord Granville.* (a)

The defendant appealed against a rate made the 22nd day of February, 1828, for the relief of the poor of the parish of Stoke-upon-Trent, whereby he was rated for a colliery, including engines and railway, at £61 17s. 5d., being a rate made upon the sum of £989 18s. The court of quarter sessions confirmed the rate, subject to the opinion of this court, on the following case:—

"The defendant is the lessee and occupier of a colliery in the parish of Stoke-upon-Trent. In the year ending on the 31st of December last (1827), he paid to his landlord, for royalty, a mine-rent upon the coals raised from the said colliery, viz., the sum of £802 1s., which sum is a *fair mine-rent* for a tenant to pay upon the quantity of coals raised in that year. The sum of £802 8s. forms part of the sum of £989 18s., upon which the defendant is charged. The defendant, some time since, erected several steam and other engines in the colliery, which are used solely in draining the mines, and in raising the coal to the surface; and he also laid down a railway, which is solely employed in facilitating the car-

A lessee of a coal mine, being the occupier, having erected a steam engine for working the mine, and thereby improve its annual value, is liable to be rated for such improved annual value.

“riage of the coals. These form the machinery with which the
 “mines are worked, and without which they could not be worked;
 “and there would be no mine-rent at all unless such machinery
 “were used. The sum of £187 10s., which is the remainder of £989 18s.
 “on which the defendant is charged, is a charge over and above the
 “amount of the mine-rent introduced into the assessment in respect
 “of the engines and railway. And it is calculated that if the
 “colliery were now to be let by the defendant to a sub-tenant,
 “along with the engines and railways, the total sum of £989 18s.
 “would not be more than a fair rent for such sub-tenant to pay. If
 “the court should be of opinion that the defendant ought to be
 “rated for his engines and railways, in addition to what he
 “ought to pay as mine-rent to his landlord, then the rate was to
 “stand; but if not, then the rate was to be reduced to £50 3s.”

Bayley, J.—“*I have no doubt that the defendant ought to be*
 “*rated for his engines and railways.* Whether the sessions have
 “made proper deductions we are not to decide. The only point for
 “our consideration is, ‘Whether the defendant ought to be rated
 “for his engines and railways?’ *If the owner had occupied the*
 “*mine he would have been liable to be rated according to the improved*
 “*value of the property,* and where the owner of a mine fixes an
 “engine, or otherwise, by expenditure of his capital, raises the value
 “of his property, he will be rateable for the value of that property so
 “improved by his expenditure. If it be leased to a tenant, who is
 “to incur the same expenditure of erecting an engine, the owner
 “will receive a less (rent or) royalty, but as a greater quantity of
 “coal will be raised the tenant will be thereby remunerated for his
 “expenditure, and, I think, the tenant being the occupier, is liable
 “to be rated for *such improved value.* The order of sessions must
 “therefore be confirmed.”

Littledale, J.—“The question is, ‘Whether the defendant be liable
 “to be rated at the increased amount mentioned in the case, by
 “reason of the engines and railway he has erected?’ Generally
 “speaking, the rate is to be in proportion to the rent. Here the
 “tenant has erected an engine, which renders the mine more produc-

“five. *It is immaterial, with reference to rateability, whether the landlord or tenant erect an engine, or lay down a railway. The bargain between the landlord and tenant may be varied on that account, but the occupier of the property is rateable in respect to its improved annual value. I think, therefore, that the lessee of this mine, being the occupier, was properly rated for the improved value.*”

Mr. Justice Parke says,—“The question left to us is, ‘Whether the defendant be liable to be rated for improvements?’ I think he clearly is.” Concluding as follows:—“The *only* question for us, however is, ‘*whether it be right in principle to rate the lessee in respect of an annual value, increased by reason of improvements made by himself.*’ I think he was properly rated for the *improved value.*”

Order of sessions confirmed.

The points contended for by the appellants in these two cases being these :

In the *Attwood case*—

The appellant, being first lessee under the ground landlord, claims to be recouped the whole of the money he had expended in bringing the mine into working order, *before the mine was brought into rate at all*; virtually saying, “I have built a house upon a piece of land which was rateable before, but only as land, now you must *cease to rate it as land as the house is built upon it*, but you must not rate the house until by the rent I shall get I shall have been enabled to get back the money I have expended in building it.”

And in *Lord Granville's case*—

The appellant being willing to be rated upon the land, though built upon, (this appeal was heard three years after the former,) but objecting to be rated for the *house*.

These two cases seem to have disposed of the principle, and to have conclusively placed coal mines in the category of public

companies earning profits, and of that class thereof where the corpus was exhaustible, classing them with brick fields, cemeteries, stone quarries, &c.

The principle upon which coal mines are to be valued being thus settled, the application becomes comparatively easy.

It is quite true there are some practical difficulties in the way. Coal owners are not required to deposit annual accounts of receipts and expenditure with the clerks of the peace, as is the case with gas and water and other companies; and the examination of private accounts might be looked upon as inquisitorial. Still, the amount of coal disposed of during the year at the pit's mouth might very well be supplied, and the amount of royalty paid. This would save the necessity of intruding upon private accounts and going into private profits. The surveyor might well be left, after he had been over the mine and examined its material, to judge for himself what it would cost for bringing the coal to bank. It might be that the owner would not give the amount actually received for coal; still, if the quantity disposed of was given, then looking at the distance to carry afterwards, whether to the port or to the market, the surveyor might form a very fair idea of what it would fetch. This, with an examination of the buildings, engines, shaft, pumps, and machinery, in order to approximate to the expense of working, would form a very good basis upon which a good surveyor would soon work out an approximate estimate, without going into the books at all. Any estimate, however, thus made, could be at once upset, if found to be based upon figures which any subsequent examinations of the books showed to be incorrect. Still, unless the valuation was grossly in excess, the coal owner might prefer not to produce the books.

The following example of the assessment of coal mines may be found useful.

	£
Estimated value of coals at the pit's mouth	- 15,000
Deduct—	
Working expenses, including the viewer's salaries and general office expenses, say 60 per cent	9,000
	£6,000

Tenant's Capital.

Cash for wages and materials, and other out-goings, for six months - - - -	4,500
Tools, tubs, horses, &c., &c., say 10 per cent. of gross receipts	1,500
	£6,000
25 per cent. for profits - - - -	1,500
Renewal of plant, (£1,500) 25 per cent., say 4 years' life - - - -	375
	1,875
	£4,125
Less risks and casualties, viz., 5 per cent. upon receipts - - - - -	750
Gross rent of mine - - - -	£3,375
Less statutable upon the perishable part of the corpus, — tramways, buildings, engines, pumps, machinery, &c.,—say - - -	1,000
Net rateable of mine - - -	£2,375

The above is given as an example, only to show how the principles laid down in the cases ought to be applied. The figures are purely hypothetical, and must not, therefore, be taken as conveying any opinion as to percentages of expenses or allowances.

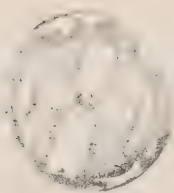
These would vary with circumstances, and each case, therefore, would have to be treated according to the special circumstances of the case, but under any circumstances the principles must be adhered to. No local customs of rating would stand on appeal if not in conformity with the principles here shewn, and it must be always remembered that the amount of royalty (for opening up) is no measure or criterion even of rateable value. In some counties coal is rated at so much per ton at the pit's mouth. If this amount is arrived at by applying the principles laid down in the cases, to a particular mine, which has raised so many tons to bank, and having ascertained the rateable value of the whole, by calculating what the whole will give per ton raised,—then, as far as that mine is concerned, the rate per ton, unless the condition of the mine and the selling price of the coal materially alter, might be fairly assumed to represent its value from year to year; but if it is a mere guess in the first instance, or, if having been obtained properly from one mine, the rate per ton is applied indiscriminately to all in the same district, whether under similar conditions of working or not, then the practice would never stand.

Colliery managers are in the habit of confounding the value to buy with the value to rent. They understand well the former, but they do not or will not understand the latter. They consider, and consider correctly, that the difference in value, between the royalty price and the selling price at the pit's mouth, is made up of working expenses, provision for redemption of capital and trader's profits,—but when they contend that none of these ought to be rated under the present system of the Poor Law, they contend wrongly.

The purchaser of a mine simply purchases the interest of the

vendor; he would, equally with the vendor, have to provide for the expenses of working. He would expect to have his capital redeemed to him by the time the mine was worked out, and he would expect to make the usual profits of a trader; he would expect them, he might not get them, but the selling price of the coal would include the three, if the state of the market could admit of it. Suppose, after a time, the purchaser gets tired of working the mine himself, and seeking to let it, what does he let in the selling price of the coal? not the first or working expenses, for the tenant would also have to pay them; not the the third, the trader's profits, for these are not rateable, but belong to him—the tenant could give no rent for these two—what does he then let but the second? for which, as it would of necessity include to him the landlord, a redemption of capital invested in a terminable concern, he would expect a higher interest than he would do, were the property permanent. When, therefore, coal managers contend that not one of the three is rateable, it is clear they do not understand the subject.

If they had defined the difference between the royalty and selling price to be working expenses, interest of outlay for winning the colliery, redemption of that outlay, (the two together being the rent to be added to the royalty,) and tenant's profits, they would probably have seen, were they open to conviction, that these two, the interest and the redemption constituted the interest of the building owner of house property, which, added to the royalty or ground landlord's interest, constituted the letting rent, to be afterwards reduced to the rateable by the deductions.



SECTION IV.

In the case of quarries or excavations for the purpose of obtaining stone, slate, and other material from the earth, the question of their rateability turns solely on whether they are open quarries, so that they approximate in nature to, and may be classed with brick fields, being of *ejusdem generis*, or whether they are closed; and so are found to be identical with mines. The principal of the decided cases on this point are, *Rex v. Sedgely*, and *Rex v. Brettel*. The first was the case of limestone; the second was the case of a *stratum* or substance, called "glasshouse pit clay, or fire-brick clay;" and in both cases it appeared that the excavations were equivalent in their nature to mines, and were therefore not rateable.

In the first case, viz., that of *Rex v. Inhabitants of Sedgely (a)*, it is laid down, that—

"The express mention in the statute 43 Eliz. c. 2, s. 1, of "coal mines, is a virtual exclusion of all other mines; consequently, other mines are not rateable to the relief of the poor(b). "Whether an excavation in the earth, from which *limestone* is "obtained, be a mine or not, is a question of fact. But when "the sessions found that the limestone was obtained and raised "by sinking shafts perpendicularly down to the stratum, which "lay forty or fifty yards below the surface of the ground, and "that the stratum was worked by roads and *gateheads*, and the "stone raised to the surface by machinery, or carried under

(a) 2 B. & Ad. 65.

(b) Last year, 1867-8, a bill was brought into the Commons to make all mines rateable, but political matters so engrossed the House, that it was for the present withdrawn.

“ground to a tunnel (which is the mode used in obtaining coal and ironstone), the court held, that the property was a *lime-stone mine*, and therefore not rateable to the relief of the “poor.”

Rex v. Brettel (c).

In *Rex v. Brettel*, Lord Tenterden, C. J., said, “I see no reason to depart from the opinion which I delivered in *Rex v. Sedgeley*. The only difference between that and the present case consists in the character of the commodity obtained. The mode of obtaining it is the same. Now, that case establishes, that in order to determine whether an excavation in the earth constitute a mine or not, *we are to look to the mode in which the article is obtained, and not to its chemical or geological character*. Here, as in *Rex v. Sedgeley*, the substance is obtained by what in the ordinary, and indeed in every sense of the word, is mining; that being so, these clay pits are mines, and consequently are not rateable to the relief of the “poor.”

The sole question, therefore, for consideration, is a question of fact, should the quarry be properly called a mine? if so, it is not rateable; but if not, and it is, as the word usually means, an open cutting, then it is rateable.

APPENDIX.

Formula for Conversion of Weekly Rents into Annual Values,
with an Example of its application to a particular Case.

Given the following data :—

Tenant's rates, 5s. in the £ on the net.

Sewers rates 1s. „ £ „ do.

Water rate 1s. „ £ on the gross.

Collection, say 10 per cent. of amount collected.

Repairs and insurance, say, 30 per cent. of gross.

Let x = net rateable ;

then $\frac{43}{100} x$ = repairs and insurance (a) ;

and $\frac{43}{100} x + \frac{x}{20} = \frac{12}{5} x$ = statutable ;

therefore $x + \frac{12}{5} x = \frac{17}{5} x$ = gross ;

and $\frac{1}{20}$ of $\frac{17}{5} x = \frac{17}{100} x$ = water rate ;

and $\frac{x}{4}$ = tenant's rates.

Then if R = the year's weekly rents,

$$R - \frac{R}{10} = \frac{9}{10} R = \text{net rents ;}$$

$$\text{and } x + \frac{12}{5} x + \frac{17}{100} x + \frac{x}{4} = \frac{9}{10} R ;$$

$$\text{and } x = 0.498 \text{ of } R = \frac{R}{2}.$$

(a) Let $\frac{p}{100}$ = percentage of gross = repairs and insurance = S .

Let R = rateable then $R + S$ = gross ;

$$\text{and } \frac{p}{100} (R + S) = S ;$$

$$\text{whence } S = \frac{p}{100-p} \cdot R ;$$

and if $p = 30$,

$$\text{then } S = \frac{30}{100-30} \cdot R = \frac{3}{7} R = \frac{43}{100} R.$$

ALLOCATION OF WORKING EXPENSES.

The modes of allocating the Working Expenses of the whole Railway to any one Parish through which it passes, are so many and so different, that it may be desirable to see them at a glance, so as to compare them.

Items of Expenditure and of Deduction.	Various modes of apportionment as contended for under different circumstances.			
Maintenance of way	Per length mile	Per train mile	What it did cost	What it should cost.
Locomotive power	Per length mile	Per train mile	Per receipts	What it should cost.
Carriage and wagon repairs	Per carriage mile	Per train mile	Per receipts	What they should cost.
Miscellaneous expenses	Per receipts	Per train mile	Per length mile	Divided into transit charges and station charges, and apportioned as per receipt and per train mile.
Government duty	Per passenger rents	Per gross receipts	The local cost.	
Tithe rent charge	The local cost.			
Rates and taxes	The local cost.			
Rateable value of stations	Per receipts.			
Gross estimated Rental of ditto	Per receipts.			
Tenant's interest	Per receipts	Per length mile	Per train mile.	
„ profits	Per receipts	Per length mile	Per train mile.	
„ risks	Per receipts	Per length mile	Per train mile.	
„ depreciation	Per receipts	Per length mile	Per train mile.	
Renewal of way and works	What it should cost	Per length mile, or Per train mile.		

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